

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285
et al. :
Plaintiffs :
 : Washington, D.C.
v. : Thursday, October 11, 2007
 :
DIRK KEMPTHORNE, Secretary :
of the Interior, et al. :
 :
Defendants : AFTERNOON SESSION

TRANSCRIPT OF EVIDENTIARY HEARING
DAY 2
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

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Page 338	Page 340
<p>For the Defendants: ROBERT E. KIRSCHMAN, JR., ESQUIRE JOHN WARSHAWSKY, ESQUIRE MICHAEL QUINN, ESQUIRE J. CHRISTOPHER KOHN, ESQUIRE JOHN KRESSE, ESQ. U.S. Department of Justice 1100 L Street, N.W. Washington, D.C. 20005 (202) 307-0010 JOHN STEMPLEWICZ, ESQUIRE Senior Trial Attorney U.S. Department of Justice Commercial Litigation Branch Civil Division Ben Franklin Station P.O. Box 975 Washington, D.C. 20044 (202) 307-1104 GLENN D. GILLET, ESQUIRE U.S. Department of Justice Commercial Litigation Branch Civil Division P.O. Box 875 Ben Franklin Station Washington, D.C. 20044 (202) 514-7162</p> <p>Court Reporter: Bryan A. Wayne, RPR, CRR Official Court Reporter U.S. Courthouse, Room 6714 333 Constitution Avenue, NW Washington, D.C. 20001 202-354-3186</p> <p>Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.</p> <p>Bryan A. Wayne, RPR, CRR Official Court Reporter</p>	<p>1 then in some instances what is historical trust accounting doing 2 in this facility. And that's where we would be using these 3 documents to walk them through the process of a transaction. 4 THE COURT: You mean if I come down there, I've 5 already seen it? 6 THE WITNESS: Well, there's a lot more to it than just 7 these documents. 8 MR. KRESSE: You're right. Your Honor, this would be 9 a presentation that would be outside of the, actually touring 10 the facility. That's why, in one sense, why we made it here, 11 because it does essentially require some level of testimony as 12 opposed to just seeing. 13 BY MR. KRESSE: 14 Q. In any event, you've made this presentation several times. 15 A. Correct. 16 Q. The forms themselves, not necessarily the data on the 17 forms, but the forms themselves, do you know roughly what period 18 of time those forms were in use? 19 A. Like when they were created? 20 Q. Well, were those forms used, for instance, when you were 21 working in the IIM branch? You want me to go through each one? 22 A. Oh, no. You mean were they using schedules of collection, 23 were they using deposit tickets, yes. They were using them when 24 I was there, and I saw earlier ones as well. 25 Q. Now, turning back to the mass cancellation documents which</p>
Page 339	Page 341
<p>1 PROCEEDINGS 2 THE COURT: All right. Everybody here? Let's just 3 continue. Thank you. 4 (The witness resumed the stand.) 5 DIRECT EXAMINATION CONTINUED 6 BY MR. KRESSE: 7 Q. Ms. Ramirez, just one kind of cleanup item. Briefly I want 8 to go back to what we called the audit trail, transactional 9 documents. The forms that we were looking at, the various 10 forms, you recall from those exhibits? 11 A. Yes. 12 Q. You've used that set of documents, you indicated, in a 13 presentation you made for this case at some point, correct? 14 A. Correct. 15 Q. And that was in connection with the paragraph 19 document 16 work? 17 A. That's correct. 18 Q. Have you used those documents in other presentations since 19 then? 20 A. Yes. 21 Q. And when was that? 22 A. At the facility I'm at now, the American Indian Records 23 Repository, we have had several opportunities to have 24 presentations like this, or tours of different individuals that 25 have come through the facility, to see the facility itself, and</p>	<p>1 we've -- exhibits which we've been looking at, we're at 2 Defendants' Exhibit 209. Looking at the upper right-hand 3 corner, there's a, looks like a stamp there and some 4 handwriting. Can you tell me what that is? 5 A. That's my signature, K. Ramirez, 7/17 -- I think it's '92. 6 Q. What does the stamp indicate? 7 A. It's a file copy stamp that we use to stamp on our 8 correspondence to show that different individuals saw the 9 document prior to it going out. 10 Q. Let's look at Defendants' Exhibit 210. And this was the 11 letter that indicated that Treasury had sent the 12 minireel 12 tapes, correct? 13 A. That is correct. 14 Q. And we discussed the fact that that was cc'd to you and the 15 individual working for Soza, the contractor; right? 16 A. That is correct. 17 Q. Let's turn to Defendant's Exhibit 207. What is this 18 document? 19 A. This is a letter to Don Gray from the accounting firm, Soza 20 & Company, where they are laying out an action plan regarding 21 the mass cancellation project and what they view as the steps to 22 be taken. So you see a background, and then you start, at the 23 bottom of the page, step one, et cetera. 24 Q. At bottom of the page in the middle there's also your 25 handwriting again with attachment 7?</p>

Page 342	Page 344
<p>1 A. That's correct. That is my handwriting. 2 Q. Let's look at the main paragraph under the Background 3 subheading. The last sentence: "Additionally, the data, which 4 could date as far back as 1954, is limited to the following 5 items: disbursing symbol, serial number, amount and date 6 canceled." Is that consistent with your recollection of the 7 information that the Treasury tapes provided? 8 A. Yes, it is. 9 Q. And you had earlier testified about the date 1954. 10 A. Mm-hmm. 11 Q. Is that consistent also with your recollection of the era 12 covered by the checks? 13 A. Yes. That's what I recall. 14 Q. Now, a little higher up in that same paragraph, five lines 15 down, the second full sentence references individual Indian and 16 tribal trust funds. Could you explain what that reference 17 means? 18 A. Tribes used to put their money into the individual 19 accounts, like the subsidiary system, because it had this check 20 writing capability where if you had check stock there at your 21 agency, you could stick a check in the typewriter and type it 22 up. As opposed to keeping your money in a tribal trust account, 23 where you would have to submit paperwork to a central office, 24 like Albuquerque, who would then submit a form and some 25 documentation to a Treasury RDO, regional disbursing office, who</p>	<p>1 and transactions and stuff like that. Another one was people 2 that held, enrolled members, names of tribes in their enrollment 3 number, not necessarily their IIM account number, and then there 4 were two other platforms, and I don't recall what those other 5 two were. 6 Q. But with regard to the IIM platform, as you described it, 7 so for a tribe, how would the tribe be identified compared to an 8 individual? 9 A. There was -- the account numbers are made up of a 10-digit 10 number. The first three digits are numbers, then the fourth 11 character is a letter, and the last six digits are numbers. The 12 first three, those numbers usually denote the tribe you're 13 enrolled in. 14 So I am Laguna, and let's say the Laguna tribal code is 15 103, so my account number, if I had one, would be 103, N for 16 nonenrolled or A for original allottee, U for unallotted. If 17 you have a tribal IIM account, there would be a T in that fourth 18 position, and that denotes that this is a tribal IIM account. 19 And then the last six digit s are either equal to your 20 enrollment number with the tribe, or some other sequential 21 number that the agency was using. 22 Q. So in short, the term T accounts referred to tribal IIM? 23 A. That is correct. 24 Q. Turning to the second page of Defendants' Exhibit 207, 25 again this is the Soza letter to Mr. Gray, step 3 indicates or</p>
Page 343	Page 345
<p>1 would then issue or cut Treasury checks on your behalf. 2 So that was a time frame there that, if you didn't want to 3 wait that period of time, it was easier to just have your money 4 in an IIM account, an IIM type account, and then get your 5 Treasury check typed right there and walk away with it. So they 6 used to like to put their money in the IIM accounts. And it was 7 tribal trust funds. 8 Sometimes tribes, when they're cutting per capitas, to 9 share some of their income or revenue with their enrolled 10 members, would have to issue a whole bunch of checks, and they 11 didn't have either the banking ability or the accounting ability 12 to issue all these checks to their enrolled members, and so they 13 asked the Bureau of Indian Affairs if they could issue these 14 Treasury checks for them. And when that happened, then they 15 would have to put their tribal trust funds into an IIM account. 16 We used to call them tribal IIM accounts. And then checks would 17 be issued from that account to all the different individuals 18 that they provided you the list of. 19 Q. So as far as the accounting system -- and at the time of 20 this letter you were using IRMS, correct? 21 A. That's correct. 22 Q. So was there an IRMS subsystem for IIM accounts? 23 A. Yes. In the IRMS it's broken down into four -- I think 24 they called them platforms, and one of them was IIM, which was 25 the accounting aspect of it that had account numbers and names</p>	<p>1 states: "Sort the data provided by Treasury by disbursing 2 symbol. This will involve separating data with disbursing 3 symbols 4844 as well as all regional disbursing office symbols. 4 The extracted data will be stratified by dollar amounts." Was 5 this work done by Soza? 6 A. Yes. Soza I guess came up with the plan of how to go about 7 going through the data that was obtained from Treasury. And so 8 this is one of the things that they recommended or thought 9 should be done, because once the data was obtained, it was 12 10 minireels. That was a whole lot of data. So the Bureau of 11 Indian Affairs is the one that had the computer system that 12 could accommodate something this big. 13 So we provided all the data to our tech center there in 14 Albuquerque, who then loaded it all onto the system, and then 15 based upon whatever direction they got either from Soza & 16 Company or from myself or Don Gray, they would prepare whatever 17 reports we wanted or stratify the data or extrapolate whatever 18 it was that we wanted. So they were recommending that this kind 19 of process occur. 20 Q. And we'll be discussing some of those tables in a few 21 minutes. The next step, 4, the middle of that paragraph, about 22 seven lines down, the sentence reads, "Also, a memo explaining 23 the mass cancellation project will be prepared and distributed 24 to the field." Was that done? 25 A. Yes. From what I remember, we did do something like that.</p>

Page 346	Page 348
<p>1 Q. And then turning to the third page of Defendants' Exhibit 2 207, this document is -- the signator is Mary Sandoval. Do you 3 know who she was? 4 A. Yes. She was the project manager for Soza & Company. 5 Q. Did she answer to you? 6 A. Yes. 7 Q. And then below that there's a signature block, indicates 8 "Concur, Donald M. Gray." And again, Mr. Gray was your boss, 9 right. 10 A. Yes. 11 Q. Turning to Defendants' Exhibit 217, this -- do you 12 recognize this document? 13 A. Yes, I do. 14 Q. What is it? 15 A. It is instructions or an informational type letter, I guess 16 you could call it, that went out to the field to explain mass 17 cancellation and the fact that we needed the field, area and 18 agency offices' help to identify specific check numbers to 19 individuals. 20 Q. On here it indicates that, the first line, "Approximately 21 37,000 IIM Treasury checks which were mass canceled remain 22 unidentified as to the area/agency and IIM account from which 23 they were issued." Do you see that? 24 A. Yes. 25 Q. Do you remember we talked before about the universe of</p>	<p>1 A. That's correct. 2 Q. And do you know who prepared this document? 3 A. It probably was me. 4 Q. And the last paragraph of the first page shows, it has your 5 name on it, correct? 6 A. That's correct. 7 Q. And Charlene Toledo? 8 A. Yes. 9 Q. What was Charlene's role? 10 A. She was an accountant within the branch of IIM. 11 Q. And she was working with you on the project? 12 A. That's correct. 13 Q. Let's look at the next page of this exhibit, page 2. Can 14 you tell me what this page represents? 15 A. This page represents all the disbursing symbols that would 16 be affiliated with individual Indian checks. So the third line 17 down, you see 4844, which is the symbol I spoke about earlier 18 where all these other symbols were consolidated into one at a 19 certain point in time. But earlier on, each symbol was 20 affiliated with an agency superintendent, and then later on just 21 became one symbol, 4844, which is where the bulk of the money 22 and the checks are in this mass cancellation. 23 Q. And this -- on 4844, the third line down, it says symbol 24 amount. What does that represent? 25 A. That means according to Treasury's data that they gave us</p>
Page 347	Page 349
<p>1 number of checks that were initially identified as mass 2 canceled? 3 A. Yes. 4 Q. So what about the -- I guess there would have been around 5 60,000 you said before? 6 A. Approximately. 7 Q. So there were roughly 23,000 that had already been 8 identified at this point? Is that what this means? 9 A. Yes. If that's the way the math works out. 10 Q. Well, in here it says as of March 31, 1993, it identifies 11 37,000 unidentified, correct? 12 A. Correct. 13 Q. And then later on, the fourth paragraph, the last line 14 states, it gives the date, June 30, 1993. What was the purpose 15 of the June 30 date? 16 A. So that we were asking in this letter or memorandum, we're 17 asking the field to take a look at the different check numbers 18 that are on these minireel tapes that are as of yet 19 unidentified, and look at their check stock inventory or 20 information that they have, to see which, if any, of these check 21 numbers are affiliated with their agency. And we want 22 information back from them no later than June 30, 1993. 23 Q. So we don't have a date on this first page, do we? 24 A. Correct. 25 Q. But we know it's sometime between March 31 and June 30.</p>	<p>1 on these 12 minireels, if you added up the dollar amounts in 2 symbol 4844, it came to \$1.8 million. 3 Q. Then the next column is titled "number of zero amount 4 checks," correct? 5 A. Correct. 6 Q. And on the third row next to 4844 you have the number 7 22,407, correct? 8 A. That's correct. 9 Q. What does that mean? 10 A. That means that out of all the checks that are listed on 11 this data from Treasury, 22,407 of them are zero dollar in the 12 amount column, for symbol 4844. 13 Q. Why would a check have no amount? 14 A. It's either because it was voided and we, the Bureau of 15 Indian Affairs, told them it was a voided check, or at this 16 point in time, when mass cancellation occurred, they heard 17 nothing from the Bureau of Indian Affairs regarding this 18 particular check and they took it upon themselves to consider it 19 void, because at this point now, any check that is out there in 20 the United States as of September 30, '89, is void, because it 21 doesn't say "void after one year" on the face of it. So it's 22 not a limited payability check, therefore, it can't be issued 23 anymore. 24 Q. So you're talking about the actual check stock is 25 outstanding, correct?</p>

4 (Pages 346 to 349)

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Page 350	Page 352
<p>1 A. That's correct.</p> <p>2 Q. It doesn't mean that BIA actually issued 22,000 checks that</p> <p>3 had zero amount.</p> <p>4 A. That's correct.</p> <p>5 Q. So you have the one category as void, which means, what, it</p> <p>6 might have run through a printer wrong or something?</p> <p>7 A. Correct. It could have been chewed up in the printer when</p> <p>8 they were doing it, it could have been messed up in the</p> <p>9 typewriter when they were typing it.</p> <p>10 Q. So it's that kind of problem, and the rest is the ones</p> <p>11 where Treasury had issued check stock to BIA?</p> <p>12 A. Yes.</p> <p>13 Q. And then checks were never used?</p> <p>14 A. At least Treasury was never informed that this particular</p> <p>15 check number was used, so they input a zero dollar amount.</p> <p>16 Q. And the reason that the check stock couldn't be used is, I</p> <p>17 think you said was because it was not a limited payability</p> <p>18 check.</p> <p>19 A. That's correct.</p> <p>20 Q. And the legend on the front of the check needed to say</p> <p>21 that, correct?</p> <p>22 A. Needs to say "void after one year."</p> <p>23 Q. Now, I noticed there's no zero amount checks for these</p> <p>24 other disbursing symbols.</p> <p>25 A. I don't know. I can't see. It's too zoomed in there.</p>	<p>1 there's either an objection to it or some cross-examination on</p> <p>2 the point, I'm going to take it as established.</p> <p>3 MR. GINGOLD: Your Honor, we're holding our objections</p> <p>4 so this should go quickly. In the cross-examination we'll deal</p> <p>5 with it.</p> <p>6 THE COURT: That's fine.</p> <p>7 BY MR. KRESSE:</p> <p>8 Q. And the final column there, Ms. Ramirez, is the total</p> <p>9 number of checks, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And in your understanding, the 60,961, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Now, between the essentially 1.9 million and the</p> <p>14 approximately 61,000 checks, what do you understand those two</p> <p>15 numbers to represent?</p> <p>16 A. All the checks that were mass canceled by Treasury that are</p> <p>17 affiliated with individual Indians or under the trust function.</p> <p>18 THE COURT: Ms. Ramirez, is the number, the total</p> <p>19 number of checks, does that include the zero amount checks so</p> <p>20 that if you want the checks that have an amount you have to</p> <p>21 subtract 22,000 from it?</p> <p>22 THE WITNESS: Yes, you do.</p> <p>23 THE COURT: Okay.</p> <p>24 BY MR. KRESSE:</p> <p>25 Q. Right. So the net of nonzero amount checks would be</p>
Page 351	Page 353
<p>1 Q. Okay. Can you back out a little?</p> <p>2 A. You're correct. I don't see any others.</p> <p>3 Q. Do you know why that would be?</p> <p>4 A. No.</p> <p>5 Q. Okay. Now, at the bottom, the last line of this document</p> <p>6 or this table says final T, the letter T.</p> <p>7 A. Mm-hmm, yes.</p> <p>8 Q. Meaning total?</p> <p>9 A. That's what I'm guessing it means.</p> <p>10 Q. Do you know who prepared this table?</p> <p>11 A. It would have probably been prepared by the direction of</p> <p>12 Soza & Company to our computer tech center.</p> <p>13 Q. And the total dollar amount there is \$1,914,528.45,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. And the total checks --</p> <p>17 THE COURT: Let me just interrupt you for a minute.</p> <p>18 This witness and for that matter the previous witness on</p> <p>19 occasion would answer questions, "do you know," by saying "it</p> <p>20 would probably have been." I don't quite know how to credit</p> <p>21 that, whether it's an established fact or not.</p> <p>22 But I want you all to know that we're dealing with what is</p> <p>23 probative and what is not. This witness seems to know what</p> <p>24 she's talking about and if she tells me that there's something</p> <p>25 that probably happened or that she thinks it happened, unless</p>	<p>1 approximately 38,500 checks, I think the arithmetic comes out.</p> <p>2 A. Okay.</p> <p>3 Q. Does that sound right to you?</p> <p>4 A. That sounds right.</p> <p>5 Q. Now, Ms. Ramirez, the next document, the next exhibit,</p> <p>6 Defendants' Exhibit 221, is a three-page document, and the first</p> <p>7 page has a date in the left-hand corner of August 6, 1993.</p> <p>8 Correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Do you know what this short text refers to?</p> <p>11 A. It is from Harriet Brown to Jim Paris, where she's saying</p> <p>12 that there is this write-up that is going to go to the OMB,</p> <p>13 Office of Management and Budget, and if you want to revise the</p> <p>14 numbers in this write-up, go ahead and do so and give it back.</p> <p>15 Q. And actually the first sentence says "a letter due to the</p> <p>16 Hill." Do you understand what that refers to?</p> <p>17 A. Yes. We the Bureau of Indian Affairs were supposed to</p> <p>18 provide a report to the Hill.</p> <p>19 Q. And then the fourth line down states that it has cleared</p> <p>20 OMB. OMB is the Office of Management and Budget, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Who is Harriet Brown?</p> <p>23 A. Harriet Brown worked in Washington, D.C. I'm not sure of</p> <p>24 her exact title, but I recall that Jim Paris reported to her.</p> <p>25 Q. The next page of this Exhibit 221, second page, do you</p>

Page 354	Page 356
<p>1 recognize that document? And it continues on to the third page.</p> <p>2 A. Yes.</p> <p>3 Q. What is this?</p> <p>4 A. This looks like our report that was provided to the Hill.</p> <p>5 Q. Were you involved in preparing this report?</p> <p>6 A. I provided a couple of decision papers or recommendations</p> <p>7 for decision papers, with statistics or information that gave a</p> <p>8 status on where we were at the time for this mass cancellation</p> <p>9 project, and they eventually used some of that information in</p> <p>10 this.</p> <p>11 Q. Directing your attention to the second paragraph of page 2,</p> <p>12 which starts "OTFM has determined that the Department of</p> <p>13 Treasury dollar level of canceled checks to be identified as</p> <p>14 specific accounts was \$1,914,528.45." That's consistent with</p> <p>15 the number we discussed just a few moments ago, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Further in the same paragraph, it states -- and OTFM is the</p> <p>18 Office of Trust Funds Management?</p> <p>19 A. That is correct.</p> <p>20 Q. Were you employed at that time by OTFM?</p> <p>21 A. What year was this?</p> <p>22 Q. 1993.</p> <p>23 A. Yes.</p> <p>24 Q. The second sentence and the third sentence addresses a</p> <p>25 number of a little over \$616,000. Can you explain what happened</p>	<p>1 A. That is correct.</p> <p>2 Q. And we already discussed what it meant to have voided a</p> <p>3 check.</p> <p>4 A. Correct.</p> <p>5 Q. But this list doesn't provide a breakdown between those two</p> <p>6 categories, right?</p> <p>7 A. No, not at this point.</p> <p>8 Q. And then the fourth paragraph down indicates in the first</p> <p>9 sentence that there were remaining checks which had not been</p> <p>10 traced, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Turning to Defendants' Exhibit 220, and this -- can you</p> <p>13 identify this document, Ms. Ramirez?</p> <p>14 A. Yes.</p> <p>15 Q. What is it?</p> <p>16 A. It is my report as of December 2 of '93 showing the status</p> <p>17 of where we are for this mass cancellation project.</p> <p>18 Q. And it indicates it's prepared by you, correct?</p> <p>19 A. That is correct.</p> <p>20 Q. And the date was December 2, 1993.</p> <p>21 A. Yes.</p> <p>22 Q. The first paragraph, the last sentence states that "this</p> <p>23 brings to date a total of 6351 checks totaling more than</p> <p>24 \$278,000 recredited to IIM accounts." Do you see that?</p> <p>25 A. Yes, I do.</p>
Page 355	Page 357
<p>1 with the \$616,000?</p> <p>2 A. Yes. We went through a couple of steps to identify this</p> <p>3 check information to specific account holders and eventually</p> <p>4 their accounts. The first pass was to take the data that was</p> <p>5 provided from Treasury and bounce it against the database that</p> <p>6 had all the account information, the transactions, et cetera,</p> <p>7 and if we got a match on that information, then -- and when I</p> <p>8 say match, I mean the check number matched, the dollar amount</p> <p>9 matched, and it was a legitimate -- not a legitimate -- it was</p> <p>10 an open IIM account.</p> <p>11 Then at that point we set them aside and we did some</p> <p>12 postings back to these IIM accounts. We did it in a couple of</p> <p>13 instances, first in April of '93 and then in August of '93. In</p> <p>14 addition to that, we also, if we didn't get a hit on the check</p> <p>15 number and the dollar amount when we bounced it up against the</p> <p>16 database, then we had information that told us that this check,</p> <p>17 this particular check came from this one agency or this regional</p> <p>18 office, and so we then identified to those regions or agencies</p> <p>19 that these checks were yours, with their documentation, could</p> <p>20 they identify the account that this check came out of. And so</p> <p>21 there were a couple of steps that were used to get to this point</p> <p>22 of \$616,000.</p> <p>23 Q. So the third sentence states that of that \$616,000 amount,</p> <p>24 the accounts either had the money reimbursed, or it turned out</p> <p>25 that the checks had been voided, right?</p>	<p>1 Q. Now, is this part of the \$616,000 that we were just talking</p> <p>2 about?</p> <p>3 A. Yes, it is.</p> <p>4 Q. So if you had 278,000 credited, then the rest of that</p> <p>5 \$616,000 amount would be attributable to what?</p> <p>6 A. Probably attributed to voids.</p> <p>7 Q. All right. So we have a little over \$300,000 of voids if</p> <p>8 that's the arithmetic, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. So if we start out with \$1.9 million and we have voids of</p> <p>11 over \$300,000, now we're down to about 1.6 million, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And we found here, based on this document, we found</p> <p>14 another, little under 300,000, correct?</p> <p>15 A. Correct.</p> <p>16 Q. So we're a little closer to sort of an unfound amount of</p> <p>17 \$1.3 million.</p> <p>18 A. That is correct.</p> <p>19 Q. Ms. Ramirez, if I could direct your attention to</p> <p>20 Defendants' Exhibit 224. This is a one-page document. Are you</p> <p>21 familiar with this table?</p> <p>22 A. Yes. I've seen it before.</p> <p>23 Q. And it's got a date under the heading of as of April 16,</p> <p>24 1993, correct?</p> <p>25 A. Correct.</p>

Page 358	Page 360
<p>1 Q. And you earlier talked about tables that were generated. 2 Do you know who generated this table? 3 A. It would have been off of that same database that all the 4 minireels were loaded onto, probably at the direction of Soza & 5 Company. 6 Q. And this first -- I'm sorry, you have, the first column 7 here is a category of essentially strata of dollar amounts for 8 these checks; correct? 9 A. That's correct. 10 Q. The first line is zero dollar amount checks, correct? 11 A. Yes. 12 Q. And it's a little over 19,000. 13 A. Yes. 14 Q. And down at the bottom -- I'm sorry. The purpose of this 15 table is what? 16 A. It was to show us, the Bureau of Indian Affairs, how the 17 check information laid out according to what was mass canceled 18 or at this point unidentified. We didn't know an account 19 number. I don't think we even knew an area or agency that may 20 have issued this particular check. 21 So we wanted to see for this category of checks how does 22 the information lay out? Is it big checks, medium checks, zero 23 dollar checks? So we had this strata put in place and then the 24 numbers run against it. 25 Q. And the largest category here or the largest number at</p>	<p>1 A. Yes. As a matter of fact, that is a good point. If we 2 knew that check No. 5 was issued from this agency and check No. 3 10 was issued from the same agency, but we didn't know about 4 check No. 8, then more than likely check No. 8 was also a check 5 that that agency issued as well. And so we at least narrowed it 6 down to a specific agency or regional office in doing research 7 for the unidentified checks. 8 Q. Ms. Ramirez, turn your attention to Defendants' Exhibit 9 225. And this is an eight-page document. What is the -- and 10 this is a series of tables, correct? 11 A. That's correct. 12 Q. And it doesn't appear to have a date on it, does it? 13 A. No. I don't see one. 14 Q. All right. The title is "Mass cancellation project, 15 analysis of Treasury listing," and then "disbursing symbol 4844 16 versus all others." What does that mean, that title? 17 A. That means that out of the 12 minireels that we received 18 from Department of the Treasury, they provided us all the 19 disbursing symbols for all agencies across the United States. 20 So not only did we get any disbursing symbols that were 21 affiliated with individual Indian checks, but everyone else as 22 well, like IRS or Veterans Affairs or any Treasury regional 23 disbursing office, RDO. We got everything. 24 Q. So looking at the last page of this document, the eighth 25 page, at the bottom, there's what's called a condensed table.</p>
Page 359	Page 361
<p>1 least is the zero dollar amounts, right? 2 A. That is correct. 3 Q. And at the bottom you have the number 37,000, looks like 8? 4 A. 003. 5 Q. Does that refer back to the 37,000 -- I'm sorry. The 6 Defendants' Exhibit 221, the second page, fourth paragraph. You 7 see that? It references 37,003? 8 A. Yes. 9 Q. Is that the same? 10 A. Same number. 11 Q. All right. Same number. And this table shows there is a 12 relatively small number of checks over the amount -- or \$500 or 13 above, correct? 14 A. Correct. 15 Q. Which I think if you add it up, it's less than 150 checks. 16 A. 500 and above. You said less than 150? 17 Q. Right. 18 A. That's correct. 19 Q. Why would you bother to try to identify these zero dollar 20 amount checks? Why spend the effort? If you have a zero dollar 21 amount, how could that help if you found out where those checks 22 were or came from? 23 A. Because that would tell you that you wouldn't have to seek 24 an IIM account to recredit. This was not a valid check. 25 Q. But would it help you to find other checks that were valid?</p>	<p>1 A. Correct. 2 Q. What does that condensed table show? 3 A. It shows that out of the disbursing symbol 4844, out of the 4 entire database that was provided to us by Treasury, that was 10 5 million checks, to the amount of \$5.1 billion. And out of that 6 the 4844 symbol was 57,000 checks and \$1.8 million. 7 Q. Turning your attention to Defendants' Exhibit 227, can you 8 tell us what the purpose of this table was? And this is a 9 one-page exhibit. 10 A. It shows that the title, analysis of checks identified to 11 date -- is that what that says? 12 Q. It's spelled "identified." 13 A. Identified to date. These are the checks that we had 14 narrowed down to at least a regional office, and it could even 15 be an IIM account. And the reason why I'm saying it could even 16 be an IIM account is because of that handwritten annotation that 17 you see saying "auto and manual." The only way I would have 18 known -- and that's my handwriting -- that these were auto or 19 manual checks is because we had bounced the data up against the 20 IRMS database, and there are codes in that database, if you're 21 issuing an automated check from someone's account, meaning that 22 they're an adult, they're legally competent, there are no holds 23 on their account and their balance reaches a certain amount, \$25 24 or higher, then a check will automatically be issued that 25 evening. Those are auto checks.</p>

7 (Pages 358 to 361)

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Page 362	Page 364
<p>1 If for some reason their account is on hold, let's say it's</p> <p>2 a minor, and their guardian or ward comes in and makes a request</p> <p>3 to the superintendent for some funds on their behalf, then</p> <p>4 they're making a request for a manual check, and then a</p> <p>5 different code is used in the system when you cut those checks.</p> <p>6 So the only way I would know that it's an auto or a manual</p> <p>7 check is because I bounced it against the IRMS database, or I</p> <p>8 had it done, and this is the information that came back. And so</p> <p>9 you see that out of the 20,000 checks that were identified,</p> <p>10 6,000 plus were affiliated with the Aberdeen region, 2,300, et</p> <p>11 cetera, Anadarko region, more than 2,800 --</p> <p>12 Q. And so on. We've just got a breakdown by region of those</p> <p>13 identified?</p> <p>14 A. Correct.</p> <p>15 Q. And the date on the second table on that page is June 30 of</p> <p>16 '92?</p> <p>17 A. Yes.</p> <p>18 Q. So is this the data -- what had happened as of that date?</p> <p>19 A. Because the table on top isn't dated, that was probably a</p> <p>20 snapshot in time. I don't know what time. But whenever we</p> <p>21 would get statistics together for the 12 regional offices and</p> <p>22 their IIM accounts, it wasn't one central database. It was 12</p> <p>23 databases. So we would have to take 12 reports and key them in</p> <p>24 to an Excel spreadsheet or something that gives you this kind of</p> <p>25 breakdown of the IIM accounts.</p>	<p>1 A. That's correct.</p> <p>2 Q. And again, just referring to disbursing symbol 4844, right?</p> <p>3 A. Yes.</p> <p>4 Q. Now, just to finish up on the mass cancellation,</p> <p>5 Ms. Ramirez, turning to Defendant's Exhibit 216, this is a</p> <p>6 two-page exhibit. Do you recognize this document?</p> <p>7 A. Yes. I've seen it.</p> <p>8 Q. What are these two documents referred to in this exhibit?</p> <p>9 A. Let's see. Is this the first page? In this first page,</p> <p>10 we're look at something from the Osage Agency, where they're</p> <p>11 writing to Albuquerque central office, and they're saying that</p> <p>12 they received a check from the Anadarko area office, where</p> <p>13 someone came in and they hadn't cashed their check. And it was</p> <p>14 a mass canceled check, because you see the date of the check is</p> <p>15 March of 1986. And so Osage Agency is asking if this is one of</p> <p>16 the checks that was mass canceled.</p> <p>17 Q. Now, early in your testimony about the mass cancellation</p> <p>18 project, you talked about how Treasury essentially was not going</p> <p>19 to refund the money to the BIA, correct?</p> <p>20 A. Right. Correct.</p> <p>21 Q. For the mass canceled checks. So in this case where would</p> <p>22 the money come from if in fact you wanted to give this person</p> <p>23 the thousand dollars they're asking for here, if in fact it</p> <p>24 proved to be a check they should have received or been able to</p> <p>25 cash?</p>
Page 363	Page 365
<p>1 Q. So this second table is actually the number of accounts in</p> <p>2 those regions, right?</p> <p>3 A. As of June 30, '92, correct.</p> <p>4 Q. So there's a total of 288,593 IIM accounts.</p> <p>5 A. Yes.</p> <p>6 Q. Then the last table we're going to look at, Ms. Ramirez, is</p> <p>7 Defendants' Exhibit 226, several tables, and it's a two-page</p> <p>8 document. The first page, can you tell us what the purpose of</p> <p>9 that table is?</p> <p>10 A. This one shows the unidentified checks for just disbursing</p> <p>11 symbol 4844, and that's broken down by strata, zero dollar</p> <p>12 versus anything -- a penny to 1.99, et cetera, all the way up to</p> <p>13 \$10,000 and greater.</p> <p>14 It shows you the total number of checks, 57,000. Of the</p> <p>15 57,000 how many at this point in time were yet unidentified,</p> <p>16 37,000. What is the percentage of the total to that one</p> <p>17 particular strata. So for example, if you look at the third</p> <p>18 line down, \$2 to 999, that shows that there were 9,220 checks in</p> <p>19 that particular strata. 4,108 of them are unidentified at this</p> <p>20 point in time, or almost 45 percent are not yet identified to an</p> <p>21 account.</p> <p>22 Q. In looking at the second page, the middle of this document,</p> <p>23 just directing your attention to the condensed table at the</p> <p>24 bottom, again we've got this zero dollar amount reference,</p> <p>25 correct?</p>	<p>1 A. The Bureau of Indian Affairs later wrote and obtained or</p> <p>2 had legislation passed or -- I don't know about legislation</p> <p>3 passed. They obtained funds, appropriated funds, to remedy any</p> <p>4 checks like this that would have been presented for</p> <p>5 reimbursement. So there was an account set up for this such</p> <p>6 case.</p> <p>7 Q. Do you know how much money was set aside by Congress for</p> <p>8 the mass cancellation?</p> <p>9 A. 500,000? The original amount might have been larger, but I</p> <p>10 know at a certain point in time it was at least 500,000 that was</p> <p>11 still available.</p> <p>12 Q. All right. Ms. Ramirez, let's turn to your current</p> <p>13 responsibility, which is the American Indian Records Repository.</p> <p>14 And we have a series of photographs, which you're familiar with,</p> <p>15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Ms. Ramirez, there were photographs taken of the AIRR on</p> <p>18 several occasions, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And what was the purpose of having those photographs taken?</p> <p>21 A. Initially the first time we had photos taken of the AIRR</p> <p>22 was for a progress report that our office, Historical Trust</p> <p>23 Accounting, was preparing, and then later on it was to be</p> <p>24 submitted as exhibits for this trial.</p> <p>25 Q. And so, do you recall when the first set of photographs was</p>

Page 366	Page 368
<p>1 taken?</p> <p>2 A. No, I do not.</p> <p>3 Q. Do you remember what year it was?</p> <p>4 A. I don't know if it was 2006 or 2005.</p> <p>5 Q. But in any event, it was for the progress report?</p> <p>6 A. Correct.</p> <p>7 Q. Were you involved in the process of getting those</p> <p>8 photographs taken?</p> <p>9 A. Yes.</p> <p>10 Q. What was your role there?</p> <p>11 A. I have purchasing authority on my government credit card.</p> <p>12 In addition to that, I have an administrative assistant that</p> <p>13 works for me, so I had her check with a couple of photographers</p> <p>14 in the area as far as doing photographs for us, getting quotes</p> <p>15 for them.</p> <p>16 Q. All right. And I'm sorry to cut you off, but the</p> <p>17 individual that took the photographs, was it the same</p> <p>18 photographer for both of these occasions that you reference?</p> <p>19 A. Yes.</p> <p>20 Q. And were you around when the photographer was taking these</p> <p>21 photos?</p> <p>22 A. Yes.</p> <p>23 Q. Now, before we get into the specific photos, what are your</p> <p>24 responsibilities as the on-site manager at the AIRR?</p> <p>25 A. I manage the contract staff that the Office of Historical</p>	<p>1 there. Is the National Archives and Records Administration also</p> <p>2 on site?</p> <p>3 A. Yes. The space -- the entire space that is being leased by</p> <p>4 the government is under a National Archives contract or lease,</p> <p>5 and then a portion of that is where Department of the Interior</p> <p>6 is, and then the Interior portion is divided between Office of</p> <p>7 Trust Records and my office, Office of Historical Trust</p> <p>8 Accounting.</p> <p>9 Q. And this facility is sometimes referred to as being in a</p> <p>10 cave. Is it actually in a cave?</p> <p>11 A. It is in a cave.</p> <p>12 Q. It's a man-made cave?</p> <p>13 A. Yes. It was a limestone cave that they were mining in the</p> <p>14 '60s or '70s.</p> <p>15 Q. Now, the systems that are used at the AIRR, there are</p> <p>16 certain information systems, computer systems that are used for</p> <p>17 the document work and the historical accounting work, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And one of those systems is the box index search system,</p> <p>20 correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Also referred to as the BISS?</p> <p>23 A. The BISS.</p> <p>24 Q. And also you have the account reconciliation tool, correct?</p> <p>25 A. Also referred to as the ART, A-R-T.</p>
Page 367	Page 369
<p>1 Trust Accounting has working there at the AIRR. There are two</p> <p>2 Interior offices there at the AIRR. One is the Office of Trust</p> <p>3 Records, and they're responsible for the trust records for</p> <p>4 Indian affairs, and they're the ones who are managing the AIRR.</p> <p>5 But my office, Historical Trust Accounting, needs these</p> <p>6 records to do this historical accounting. So we have sublet</p> <p>7 space from them to be there in that facility, so that we can</p> <p>8 search these records to do the historical accounting.</p> <p>9 So we have two contract firms that are there. One is an</p> <p>10 accounting firm and one is an imaging and coding firm. About</p> <p>11 130, maybe 135 people all together that are there. Half of</p> <p>12 them -- approximately half of them do document search, will</p> <p>13 actually look through the boxes for particular documents, and</p> <p>14 the other half do the imaging and coding of whatever it is we</p> <p>15 find.</p> <p>16 Q. And the accounting contractor is what company?</p> <p>17 A. Clifton Gunderson.</p> <p>18 Q. And were they previously under a different name?</p> <p>19 A. Yes. They used to be Chavarria, Dunne & Lamey.</p> <p>20 Q. And then the other company that does the imaging and</p> <p>21 coding?</p> <p>22 A. Ecompex, Incorporated.</p> <p>23 Q. Can you spell Ecompex?</p> <p>24 A. E-C-O-M-P-E-X.</p> <p>25 Q. You indicated that the Office of Trust Records is on site</p>	<p>1 Q. And are there other systems that are used for the purposes</p> <p>2 of the --</p> <p>3 THE COURT: What kind of soup do they give you in the</p> <p>4 cafeteria at lunch?</p> <p>5 THE WITNESS: Alphabet.</p> <p>6 (Laughter)</p> <p>7 BY MR. KRESSE:</p> <p>8 Q. And since the Court has expressed an interest in a tour of</p> <p>9 the AIRR, Ms. Ramirez --</p> <p>10 THE COURT: I think my enthusiasm is waning rapidly.</p> <p>11 (Laughter)</p> <p>12 MR. KRESSE: That wasn't my intended goal, Your Honor.</p> <p>13 BY MR. KRESSE:</p> <p>14 Q. Are you involved in setting up tours?</p> <p>15 A. Yes.</p> <p>16 Q. And what do you do?</p> <p>17 A. Either the tour can be made as a request to the OTR trust</p> <p>18 side or to our side. It depends. The OTR side is under Office</p> <p>19 of the Special Trustee, so they have a lot of personnel that</p> <p>20 work at agencies and regional offices. Sometimes they have</p> <p>21 meetings in the Kansas City area, and they'd like for them to</p> <p>22 see this facility, because when you are doing research on a</p> <p>23 particular account or transaction and you need a specific</p> <p>24 document, you make this request to somewhere in Kansas, and</p> <p>25 people refer to this cave or AIRR, and they have a hard time</p>

Page 370	Page 372
<p>1 identifying or understanding that if I want a journal voucher 2 from 1956, what is the big deal? Why does it take so long? Why 3 is it so hard?</p> <p>4 Well, it speaks a thousand words when you actually go and 5 see how big the facility is, the volume of boxes of records that 6 are there, the steps you have to go through in identifying the 7 box that has that particular document, and then extracting it 8 and either photocopying it or imaging and coding it.</p> <p>9 So it helps at least day-to-day operations, and I know it 10 is something we have to do for the historical accounting, but it 11 provides understanding when people actually see that it really 12 is a cave, you can stand upright, we have electricity and 13 plumbing facilities and everything. It's big, like 90 acres 14 underground, because big trucks like tractor trailer rigs drive 15 under there, and just a portion of it is what is leased by the 16 government.</p> <p>17 There are private companies down there that have their 18 businesses as well, because it's a good storage facility for 19 them. It's climate controlled, there aren't rodents down there. 20 And when you go down there and you're driving into the cave, 21 that's kind of unsettling because you're driving into this cave, 22 and then you go up a street and you see a long road ahead of you 23 with lights way down there, and you can't believe it goes that 24 far, and then you get way to the back of the cave, which is 25 where the NARA/AIRR space is at, you see the front entrance to</p>	<p>1 Q. And OHTA has office space?</p> <p>2 A. Yes, we do.</p> <p>3 Q. And then you have your 130 or so contractor employees?</p> <p>4 A. That is right.</p> <p>5 Q. And they occupy quite a large area, which we'll see?</p> <p>6 A. They occupy half of a bay.</p> <p>7 Q. But there's also another part of this facility that -- it's 8 not part of the cave itself, but it's off-site, and that's what 9 we refer to as the annex, correct?</p> <p>10 A. That is correct.</p> <p>11 Q. What happens basically at the annex?</p> <p>12 A. Basically at the annex, that's where the boxes arrive from 13 across the United States, and that is managed or run by the 14 Office of Trust Records. And so when the boxes get there to 15 that facility, they unload them or offload them from these 16 trucks. They have a staff there, a contract staff. It looks to 17 me like 60, 80, maybe 90 people all together that are working at 18 that facility. And their job is to index or inventory what is 19 in these boxes, to a certain level, and then make sure the boxes 20 are all labeled across the front and they're grouped in certain 21 groups, like personnel records are in this group and realty 22 records are in that group and financial documents are in this 23 group, et cetera.</p> <p>24 And then accession numbers are assigned to these groups of 25 boxes, and then eventually the boxes are then transported to the</p>
Page 371	Page 373
<p>1 the AIRR, and you're impressed because, wow, it really is an 2 office.</p> <p>3 And then you go in and there are people working in there 4 and you take the tour and you see the shelving or the rooms that 5 the National Archives has, with these rooms they call bays that 6 are the size of a football field, each room, and they're up to 7 room 12 or 13 now, from what I understand, with the shelving 8 that is two stories tall, all the way across this room.</p> <p>9 So that's a lot of stuff. And the Bureau of Indian Affairs 10 or Indian Records is just one of those rooms. We are not their 11 biggest client. From what I understand, the IRS is their 12 biggest client, or so says the NARA individual who normally 13 gives the NARA side of the tour. So then you see through this 14 process that there is a whole lot of stuff and there's all these 15 people and all this work being done, and I think it's rather 16 impressive.</p> <p>17 Q. Just to give a quick breakdown of the different areas. 18 You've already described the bays that are -- that's NARA's 19 area, right?</p> <p>20 A. That's correct.</p> <p>21 Q. Where the actual boxes are kept, permanently kept?</p> <p>22 A. That is their facility, their property.</p> <p>23 Q. And in the cave you also talked about how OTR has office 24 space?</p> <p>25 A. That's correct.</p>	<p>1 cave and custody is handed over now from Department of the 2 Interior to the National Archives. And the information that's 3 obtained at this annex facility goes into a database called the 4 BISS, B-I-S-S, and that is what we all use, whoever wants to do 5 research with these boxes, to identify what box you want and 6 where you're going to find that journal voucher or that deposit 7 ticket, et cetera.</p> <p>8 Q. All right. Well, let's go to the slides, then. I'll just 9 ask you as they come up, I'll identify it by exhibit number and 10 then you can just give us a very general description of what 11 we've got.</p> <p>12 The first slide is Defendants' Exhibit DX 163. What does 13 that show?</p> <p>14 A. This is what we were referring to as the annex. This is 15 the facility that is above ground where the boxes go to be 16 indexed.</p> <p>17 Q. And there's a picture of a tractor trailer truck there, 18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And is that backed up to the bay for the offloading of 21 documents?</p> <p>22 A. That's correct.</p> <p>23 Q. Then Defendants' Exhibit 164, what does that show?</p> <p>24 A. This is the front entrance to that facility. You have to 25 go through a magnetometer, you are -- the employees that work</p>

Page 374	Page 376
<p>1 there wear badges. If you're a visitor, you sign in and get a</p> <p>2 visitor's badge.</p> <p>3 Q. Then the next photograph, what does that show? And I'm</p> <p>4 sorry, were you present when these photographs were taken?</p> <p>5 A. Yes, I was.</p> <p>6 Q. And these photographs of the annex, those were all taken at</p> <p>7 what time, do you recall?</p> <p>8 A. It wasn't that long ago.</p> <p>9 Q. This summer?</p> <p>10 A. Yes. It was the summer.</p> <p>11 Q. So what does this photograph show?</p> <p>12 A. This shows that this particular truck that was delivering</p> <p>13 boxes that day has a seal that goes on the back of the truck.</p> <p>14 Once these trucks pick up records at a certain location, they're</p> <p>15 not to stop anywhere else, pick up anything else, because once</p> <p>16 the boxes are loaded, then they're sealed with this type of</p> <p>17 metal or aluminum or whatever looking thing she's cutting off.</p> <p>18 Q. All right. And who is the individual, do you recall?</p> <p>19 A. That's a Labat employee, which is a contractor for Office</p> <p>20 of Trust Records.</p> <p>21 Q. And looking at Defendant's Exhibit 166, what's that?</p> <p>22 A. That is the truck now open and those are the boxes inside</p> <p>23 the truck.</p> <p>24 Q. Defendants' Exhibit 167. Can you explain what's going on</p> <p>25 there?</p>	<p>1 Q. And this is a big open area?</p> <p>2 A. Big open area.</p> <p>3 Q. Let's go to Defendants' Exhibit 170. This is again, it</p> <p>4 looks pretty redundant but what's the difference between what</p> <p>5 we've got in 169 and 170?</p> <p>6 A. There are a lot more pallets stacked in this one particular</p> <p>7 area, and it's taken from a different angle.</p> <p>8 Q. So we've still got the shrink wrap, nothing else has been</p> <p>9 done, right?</p> <p>10 A. That's correct.</p> <p>11 Q. Now, Defendants' Exhibit 171, what does this photograph</p> <p>12 show?</p> <p>13 A. This is showing that they have in this same open area to</p> <p>14 one side of the room there, where they, once -- where they</p> <p>15 unwrap the boxes. They break the shrink wrap, they take them</p> <p>16 off the pallets, they line them up on these shelves, and from</p> <p>17 what I understand, they line them up there so they can number</p> <p>18 them or give them these accession numbers.</p> <p>19 Q. And who sets up the accession numbers?</p> <p>20 A. The National Archives provides them to the Office of Trust</p> <p>21 Records.</p> <p>22 Q. All right. Next slide is Defendants' Exhibit 172. And</p> <p>23 what is this individual doing?</p> <p>24 A. He's probably -- no. I know he's writing the 075 number on</p> <p>25 this box.</p>
Page 375	Page 377
<p>1 A. Now they're offloading the boxes that are in this truck</p> <p>2 into the facility.</p> <p>3 Q. And are those boxes shrink-wrapped on that pallet?</p> <p>4 A. Yes, they are.</p> <p>5 Q. And next photo.</p> <p>6 A. The truck is to the right, and he has come around like in a</p> <p>7 u-turn and he's going into the facility through these plastic</p> <p>8 shred things there and taking it into the area where the workers</p> <p>9 are indexing the boxes.</p> <p>10 Q. All right. And the next slide?</p> <p>11 THE DEPUTY CLERK: I'm going to need a number.</p> <p>12 MR. KRESSE: I'm sorry. Defendants' Exhibit 168.</p> <p>13 THE DEPUTY CLERK: 168?</p> <p>14 MR. KRESSE: Yes.</p> <p>15 THE COURT: Okay. Thanks.</p> <p>16 MR. KRESSE: Sorry.</p> <p>17 BY MR. KRESSE:</p> <p>18 Q. Defendants' Exhibit 169, the next photo.</p> <p>19 A. That shows an area where they are stacking all the pallets</p> <p>20 of the boxes that are coming off of this truck.</p> <p>21 Q. Now, the work area, you described a group of workers who</p> <p>22 are doing the BISS index work, right?</p> <p>23 A. Yes.</p> <p>24 Q. And relative to this photograph, where are they located?</p> <p>25 A. They're to the right behind the photographer.</p>	<p>1 Q. 075 being what?</p> <p>2 A. 075 is a NARA accession number that is provided to the</p> <p>3 Office of Trust Records so that they, the National Archives, can</p> <p>4 identify this group of boxes.</p> <p>5 Q. And going to Defendants' Exhibit 173, what does that show?</p> <p>6 A. This shows the workers that are actually doing the indexing</p> <p>7 into the BISS.</p> <p>8 Q. And this contractor --</p> <p>9 A. This is Labat. They're a contractor of OTR, Office of</p> <p>10 Trust Records.</p> <p>11 Q. So in this picture to the far right, is that shelving over</p> <p>12 there on the far right side sort of in the middle?</p> <p>13 A. Yes.</p> <p>14 Q. And is that the shelving that you were referring to</p> <p>15 previously after the shrink wrap had been removed?</p> <p>16 A. That's correct. That's the shelving we just saw.</p> <p>17 Q. Now, moving to Defendants' Exhibit 174, what does this</p> <p>18 photograph show?</p> <p>19 A. This is a close-up of an individual keying into the system,</p> <p>20 into the BISS.</p> <p>21 Q. All right. Can we zoom in on the display?</p> <p>22 Now, what system is this that's shown on the CRT or the --</p> <p>23 A. This is the BISS, the Box Index Search System.</p> <p>24 Q. So the information that's -- for instance, the top, "tried</p> <p>25 code," do you see where that is in the upper left? "Tried</p>

Page 378	Page 380
<p>1 code"? 2 A. Yes. 3 Q. "100 Portland area office." That's information input by 4 the individual in this picture? 5 A. That's correct. 6 Q. So all this information here this person has typed in, is 7 that your understanding? 8 A. I understand that some areas of this screen we're looking 9 at are prepopulated and others they type in. 10 Q. All right. Let's go to Defendants' Exhibit 175. 11 Ms. Ramirez, what does this photo show? 12 A. It shows that once the boxes have indexed into BISS, now 13 they get repalletized, reshink-wrapped for shipment now from 14 this facility to the cave to go to National Archives. 15 Q. The next photograph, Defendants' Exhibit 176. What does 16 that represent? 17 A. That is the truck that Labat uses to take the boxes away 18 from this facility to the cave. 19 Q. And let's go to Defendants' Exhibit 177. 20 A. That's the entrance to the cave. One of them. 21 Q. And as you referenced before, this is a facility that 22 houses other operations besides just even NARA and Interior, 23 correct? 24 A. That is correct. 25 Q. So is Meritex -- that's the name of the place, the Meritex</p>	<p>1 A. The front of it. 2 Q. Right. The front of the box. 3 A. Yes. 4 Q. See if we can zoom in. 5 A. Yes, it looks like these are the Indian records, because 6 the box to the most right says "J.V.," and that stands for 7 journal voucher. 8 Q. And FY 93? 9 A. Correct. 10 Q. Meaning what? 11 A. Fiscal year 1993. 12 Q. And the next, Defendants' Exhibit 181, just another view of 13 the bay, correct? 14 A. That's correct. 15 Q. And are these Indian records, to your knowledge? 16 A. They look like it, because the boxes to the right look like 17 they say 075, yes. 075 is the NARA accession number that is 18 provided to Interior, and anything 075 is Indian records. 19 Q. Then going to Defendants' Exhibit 182. 20 A. That is a screen for the Box Index Search System. 21 Q. And who uses the Box Index Search System? 22 A. Our contractors for searching the boxes, as well as the 23 Office of Trust Records, because they too are searching boxes. 24 Q. Now, the individuals who are searching the boxes, are they 25 the individuals who are also reconciling transactions --</p>
Page 379	Page 381
<p>1 Lenexa Executive Park? 2 A. They own the facility or the cave and they lease to other 3 companies. 4 Q. Okay. Let's go to Defendants' Exhibit 178. What does that 5 show? 6 A. That shows the road that -- there are several roads in this 7 cave. This is one of them, when you take a turn, go into the 8 cave, you see this long road in front of you. 9 Q. And eventually, it leads to what's shown at Defendants' 10 Exhibit 179, correct? 11 A. That's correct. 12 Q. And that is what? 13 A. The American Indian Records Repository. That's the front 14 of it. 15 Q. The entrance to the office space? 16 A. The front entrance to the office space. And this office 17 space is the space that the Office of Trust Records occupies. 18 Q. Then let's go to Defendants' Exhibit 180. What does that 19 show? 20 A. This is one of the bays that NARA has, and the shelving you 21 see is what I was talking about earlier, with all the boxes that 22 are on the shelves. 23 Q. Are these Indian records? 24 A. I can't tell, but -- I can't tell. 25 Q. If you were able to look at the box --</p>	<p>1 A. Yes. 2 Q. -- for the historical accounting? 3 A. Yes. Our office has at least four accounting firms that 4 are doing reconciliation, and one of them is Clifton Gunderson. 5 Clifton Gunderson also happens to be our document search 6 contractor as well. 7 Q. But are the individuals who are searching the boxes the 8 same individuals who are actually reconciling transactions? 9 A. No. 10 Q. So you've segregated those functions, correct? 11 A. That's correct. 12 Q. So one of the other accounting contractors could submit a 13 request for documents, correct? 14 A. Correct. 15 Q. And then the Clifton Gunderson searchers, right, 16 researchers? 17 A. Yes, they search for that document, yes. 18 Q. So let's go to Defendant's Exhibit 183. What does that 19 show? 20 A. That shows the manager's table for the Clifton Gunderson 21 side where -- they are the ones who see the requests from the 22 different accounting firms for particular documents. They query 23 the BISS, the Box Index Search System, and then they decide 24 which boxes are going to be ordered so that they can be searched 25 by their staff there.</p>

Page 382	Page 384
<p>1 Q. Then Defendants' Exhibit 184. What does that show?</p> <p>2 A. This is a different area but still on the Clifton Gunderson</p> <p>3 side of the house where, we call this the BLOC, B-L-O-C, Box</p> <p>4 Logistics Operations Center. When boxes are ordered by Clifton</p> <p>5 Gunderson -- and nowadays we're doing about 300 to 350 boxes a</p> <p>6 day. When they come in from the National Archives, custody is</p> <p>7 transferred from NARA to us, Office of Historical Trust</p> <p>8 Accounting, they line these streamliners up. The thing with all</p> <p>9 the boxes piled on it with the wheels there, that's the</p> <p>10 streamliner. So they will line these streamliners up in front</p> <p>11 of this area and key in to a database that they have that they</p> <p>12 have actually received box 1 and 9 and 6 and 12 into their</p> <p>13 database.</p> <p>14 Q. What happens once the boxes have been keyed in that are on</p> <p>15 the streamliner?</p> <p>16 A. Once they have been keyed in, then they put them on shelves</p> <p>17 in different areas. You see behind him there are some shelves</p> <p>18 there. Also behind the photographer, what you don't see are</p> <p>19 more shelves as well. They have delineated these shelves into</p> <p>20 sections so that a particular section represents a particular</p> <p>21 project.</p> <p>22 For example, we are working on reconciling judgment</p> <p>23 accounts, per capita accounts, special deposit accounts, the</p> <p>24 land-based type accounts. And so each box is assigned to a</p> <p>25 particular project, and therefore it goes in a certain spot on</p>	<p>1 search these boxes for different things. The other side, Office</p> <p>2 of Trust Records, also needs these boxes to do document search.</p> <p>3 And sometimes plaintiffs come in and want to do document search</p> <p>4 or --</p> <p>5 Q. You mean plaintiffs in other lawsuits, not this lawsuit?</p> <p>6 A. Correct. In other lawsuits. Would like to search these</p> <p>7 boxes as well. So we don't want to tie the box up for the time</p> <p>8 that it takes to image and code that one document, so we'll pull</p> <p>9 it out, photocopy it, make the best photocopy that we can make,</p> <p>10 and then pass the photocopy on to the imaging/coding side, and</p> <p>11 return the box.</p> <p>12 THE COURT: Ms. Ramirez, can you give me an example of</p> <p>13 what they're searching for? I mean, what would a search be?</p> <p>14 THE WITNESS: If our office has assigned a particular</p> <p>15 accounting firm to reconcile certain transactions or certain</p> <p>16 accounts, when that accounting firm looks at this one</p> <p>17 transaction, like a posting into someone's account for \$50, and</p> <p>18 it's plus, so it's a collection, the accounting firm knows from</p> <p>19 the experience and training that we've given them, that you need</p> <p>20 to find either the bill for collection or the deposit ticket or</p> <p>21 all of that, and then even further, earlier in the process you</p> <p>22 need to find the lease, because you want to ensure that it was</p> <p>23 suppose -- it is \$50 that you were supposed to collect and not</p> <p>24 \$80.</p> <p>25 So that accounting firm, just in this one assignment of</p>
Page 383	Page 385
<p>1 the shelves, and the shelves are also separated by where in the</p> <p>2 process it should be. For example, when a box first comes out</p> <p>3 from the National Archives, it goes on to a shelving section</p> <p>4 that would be annotated search.</p> <p>5 Once it's searched, it would be moved to a different</p> <p>6 section of the shelving for quality control, or QC. Once it's</p> <p>7 QC'd then it would be moved to a different section of the</p> <p>8 shelves, or even put on a streamliner to be returned to the</p> <p>9 National Archives.</p> <p>10 Q. So the QC is for the purpose of doing what?</p> <p>11 A. To ensure that we didn't miss a document that we were</p> <p>12 searching for.</p> <p>13 Q. And then Defendants' Exhibit 185, just a close-up of what</p> <p>14 we were looking at before; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. All right. Then Defendants' Exhibit 186.</p> <p>17 A. This shows an actual search team, still on the Clifton</p> <p>18 Gunderson side. They're going through boxes where they are</p> <p>19 looking for documents.</p> <p>20 Q. Now, if they find documents, what do they do after that?</p> <p>21 A. If they find a document in a box, and it's just one</p> <p>22 document, they'll photocopy the document. And you see</p> <p>23 photocopiers to the right there, and even a little bit on the</p> <p>24 left you see a photocopier. Because the documents that we're</p> <p>25 finding in these boxes, we're not the only ones that want to</p>	<p>1 this transaction, knows that they need the bill, the schedule of</p> <p>2 collections, the deposit ticket, and the lease. So they will</p> <p>3 make that request to this facility for all those documents. And</p> <p>4 then will query through the BISS, find that it's these 10 or 20</p> <p>5 boxes, pull those out, search them, find them, either photocopy</p> <p>6 them -- if it's a voluminous type thing, like invalidating the</p> <p>7 data that we're working with, sometimes we need a whole report,</p> <p>8 and those reports can get very big, like half of a box or</p> <p>9 something, then we will just pass the whole box on to the</p> <p>10 imaging/coding side of the house, and they'll image and code</p> <p>11 that document.</p> <p>12 THE COURT: Thank you.</p> <p>13 THE WITNESS: You're welcome.</p> <p>14 BY MR. KRESSE:</p> <p>15 Q. And you indicated you might be searching, for instance, 20</p> <p>16 boxes for a particular document. Why can't you just find or</p> <p>17 know that a box contains the specific document or documents</p> <p>18 you're looking for?</p> <p>19 A. Because when the inventory or indexing is occurring of</p> <p>20 these boxes up at that facility called the annex, when you open</p> <p>21 a box, they've been instructed to index or inventory to the</p> <p>22 document type level. So if you open a box that has three types</p> <p>23 of documents -- bills for collection, schedules of collection,</p> <p>24 and deposit tickets -- they're going to capture what's written</p> <p>25 on the front of the box, they're going to capture what's written</p>

13 (Pages 382 to 385)

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Page 386	Page 388
<p>1 on every single file folder label, and inside each file folder 2 they're going to capture the types of documents they see. 3 So if there are nine file folders and three have bills for 4 collection, three have schedules of collection, and three have 5 deposit tickets, you will see all nine file folder titles, and 6 then you'll see the words "schedules of collection," "bills for 7 collection," "deposit tickets." And then you'll see a beginning 8 and an ending date. Like the earliest date for this particular 9 file is March of '93, and the ending date is May of '93. 10 You don't know that it's the bill for collection No. 2220 11 dated March 13 of '93. So if there are a couple of files or a 12 couple of boxes that have some deposit tickets or schedules of 13 these types of documents in them, then you have to request four 14 or five or whatever boxes and look through them until you find 15 the deposit ticket you were looking for. 16 Q. And these boxes also indicate where the documents came 17 from, right? 18 A. That's correct. In this BISS or Box Index Search System, 19 they capture where the box came from. So in earlier testimony I 20 said that, you asked how many copies of these documents are 21 there? Well, there were a lot of copies made of these documents 22 for different offices, so if I wanted to find a bill for 23 collection or a deposit ticket, I could look either in the 24 agency box, like Pawnee Agency, or I could look in the Anadarko 25 area box for that same deposit ticket, because both of them</p>	<p>1 Q. What are these individuals doing? 2 A. These guys are imaging. And I know they're imaging because 3 there are scanners in front of them and they actually have the 4 boxes in front of them. 5 Q. And each individual, are they able to work on as many boxes 6 as they want, or how -- 7 A. You can only work on one box at a time. 8 Q. And Defendant's Exhibit 189, what's going on in that 9 picture? 10 A. These are coders, and I know they're coders because, first 11 of all, you don't see the scanners in front of them, nor do you 12 see boxes in front of them. You just have computer screens and 13 keyboards. So once the imaging is done and all the imaging is 14 quality control checked, because we can't have it crooked, we 15 can't have it cut off, we can't have it blurred, because we have 16 an accounting firm in Los Angeles that needs to know that that 17 deposit ticket is \$8.29 and not \$3.29. 18 So then images, after they're quality control checked, get 19 passed to the coding side of the house, where these coders do a 20 double blind code. That means that they assign the same image 21 to two different individuals. So two different people will get 22 the same deposit ticket or the same journal voucher, and they 23 have to capture certain information off of these documents that 24 was predetermined by our office and the accounting firms on what 25 are we going to code for a deposit ticket, what are we going to</p>
Page 387	Page 389
<p>1 would have had a copy of it. 2 Q. Looking at Defendants' Exhibit 187, what kind of work is 3 going on there? 4 A. This is now the imaging side of the room, with Ecompex, and 5 these are preppers. They are prepping or preparing the 6 documents for imaging. In the scenario where we pass a box on 7 to this contractor for imaging, we have to take out staples and 8 paper clips and take off rubber bands, et cetera, to pass the 9 documents through imaging. We also have to reassemble these 10 documents exactly the way they were when we took them apart. 11 When we reassemble we use stainless steel paper clips and 12 stainless steel staples. We do not put rubber bands back on. 13 Those damage documents. So instead we put them in expandable 14 file folders. 15 But we have to know that we took the paper clip off here or 16 we took the staple out here, so all these different colored 17 pieces of paper mean something to the imager: start the staple, 18 stop the staple, start the paper clip, stop the paper clip, 19 et cetera. 20 Q. And these individuals pictured here work for Ecompex, 21 correct? 22 A. That is correct. 23 Q. And the next photograph, Defendant's Exhibit 188, these are 24 also Ecompex people pictured in the foreground? 25 A. That is correct.</p>	<p>1 code for a journal voucher, what are we going to code for a 2 lease. 3 So they will capture the information they're supposed to 4 off the document in front of them, and then the two coders' 5 information is bumped up against each other. If one captured 6 \$8.29 and the other one coded \$3.29, then somebody quality 7 control checks it to see was it really an 8 or was it a 3. 8 Q. And then the last photograph of the facility itself and the 9 work going on there is Defendants' Exhibit 190. What does that 10 photograph show? 11 A. That's a screen off of the imaging coding database that 12 shows the document on the left side. And on the right side you 13 see the coding information. 14 Q. And this in this case is a journal voucher, correct? 15 A. That's correct. 16 Q. Now, we have just several more photographs of actual 17 documents that are in the collection at the AIRR, which you've 18 seen before, correct? 19 A. Yes. 20 Q. And do you remember when these photographs were taken? 21 This would be Defendants' Exhibit 191 through Defendants' 22 Exhibit 205. 23 A. I believe these ones were taken earlier when we, OHTA, was 24 preparing its progress report. 25 Q. Now, how were these specific documents selected, do you</p>

Page 390	Page 392
<p>1 recall?</p> <p>2 A. Washington, D.C. advised Lena Mills, who is in charge of</p> <p>3 the Office of Trust Records there at the facility, that they</p> <p>4 wanted some older type documents, like ledger books or ledger</p> <p>5 cards. So based upon some querying that either she did or she</p> <p>6 had her staff do, they were -- they pulled these ledger books</p> <p>7 out and put them in a particular room, and we had the</p> <p>8 photographer photograph them.</p> <p>9 Q. And the first photograph is up on the screen here,</p> <p>10 Defendants' Exhibit 191.</p> <p>11 A. Yes.</p> <p>12 Q. And again, it speaks for itself, but this is the inside</p> <p>13 cover, correct, of a ledger book?</p> <p>14 A. That's correct.</p> <p>15 Q. Do you know -- well, never mind. Let's go to the next</p> <p>16 document, Defendant's Exhibit 192. Ms. Ramirez, can you see the</p> <p>17 date on that document?</p> <p>18 A. Yes.</p> <p>19 Q. The transaction listed at the top left corner?</p> <p>20 A. Yes, it looks like 1879.</p> <p>21 Q. And it indicates, the document indicates Arizona Agency,</p> <p>22 correct?</p> <p>23 A. Yes. Well, it says agency, Arizona, so I think it's, the</p> <p>24 name of the agency is something else, but it's in Arizona. If</p> <p>25 you pan to the left, I think it actually -- and go higher. It's</p>	<p>1 A. 1924.</p> <p>2 Q. Then we have Defendants' Exhibit 198. Do you recall what</p> <p>3 the purpose of this photograph was when it was taken?</p> <p>4 A. Yes. It was to show you the size of some of these ledgers.</p> <p>5 It's not recommended, but they would fill a ledger this full,</p> <p>6 and that box you see on the right is one cubic foot. So this</p> <p>7 ledger is about that big.</p> <p>8 Q. And then the following, Defendants' Exhibit 199, shows</p> <p>9 transactions from 1932, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And it indicates checks paid, correct?</p> <p>12 A. Yes, it does.</p> <p>13 Q. And then you have Defendants' Exhibit 200.</p> <p>14 A. Same book.</p> <p>15 Q. Do you know what transactions are described there?</p> <p>16 A. It also looks like checks.</p> <p>17 Q. And Defendant's Exhibit 167. I'm sorry. Defendants'</p> <p>18 Exhibit 201.</p> <p>19 A. That's also a ledger book.</p> <p>20 Q. What information is shown on that page on the screen?</p> <p>21 A. It looks like it's a report that would have been prepared</p> <p>22 by the Osage Agency, to be provided to some central office</p> <p>23 somewhere, because we were required on a monthly basis when I</p> <p>24 was in the branch of IIM to report collections, disbursements to</p> <p>25 the Treasury Department.</p>
Page 391	Page 393
<p>1 Colorado River Agency in Arizona.</p> <p>2 Q. And you've reviewed these photographs before, correct?</p> <p>3 A. Yes, I have.</p> <p>4 Q. And what kind of transactions are described here?</p> <p>5 A. Receipts and disbursements that have gone through the</p> <p>6 Colorado River Agency.</p> <p>7 Q. And looking at Defendants' Exhibit 193, that appears to be</p> <p>8 the same ledger book, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And Defendant's Exhibit 194?</p> <p>11 A. Same ledger book.</p> <p>12 Q. And those transactions, upper right corner, appear to be</p> <p>13 1880, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And one final one, also that ledger book it appears,</p> <p>16 correct? 195, I'm sorry. Defendants' Exhibit 195.</p> <p>17 A. Yes, that's correct.</p> <p>18 Q. Then the next, Defendants' Exhibit 196. What does that</p> <p>19 appear to be?</p> <p>20 A. This is also a ledger book. It looks like it's from 1924</p> <p>21 and 1925.</p> <p>22 Q. And then the next photograph, Defendants' Exhibit 197. You</p> <p>23 see that?</p> <p>24 A. Yes.</p> <p>25 Q. And that shows transactions from what year?</p>	<p>1 Q. And the date of this document?</p> <p>2 A. 1958.</p> <p>3 Q. And the same, Defendant's Exhibit 202, also 1958, correct?</p> <p>4 A. Yes.</p> <p>5 Q. I'm sorry, and then finally -- I'm sorry for that. We have</p> <p>6 Defendants' Exhibit 203. Can you describe what that form shows?</p> <p>7 A. Let's see. This is also the Osage Agency in Pawhuska,</p> <p>8 Oklahoma. It looks like they are reporting receipts and</p> <p>9 disbursements for particular appropriations.</p> <p>10 Q. When you say appropriations, different accounts?</p> <p>11 A. Correct. Different accounts.</p> <p>12 Q. Then looking at Defendants' Exhibit 204.</p> <p>13 A. It's the front of a box. It shows to me that in the upper</p> <p>14 left corner it's from the Anadarko regional office. I know that</p> <p>15 because of the B00 that you see. I also know that there are 51</p> <p>16 boxes in this particular accession or group of boxes, because</p> <p>17 the upper right-hand corner says that this is box 8 of 51.</p> <p>18 And then it also shows that the National Archives assigned</p> <p>19 it accession number 075-04-0650. That's the number on the</p> <p>20 bottom left. I know it's Indian records because it's 075. I</p> <p>21 know the National Archives received this accession of boxes in</p> <p>22 the fiscal year of 2004. Those are the middle digits in that</p> <p>23 number. And then I also know that it has not only the regional</p> <p>24 office records in it, but also a couple of their agencies are in</p> <p>25 here. And I know that because the numbers in the middle of the</p>

Page 394	Page 396
<p>1 box, to the left of that hand-held hole there, say B00/B08/B05. 2 B00 is the regional office, B08 is one of its agencies, B05 is 3 another one of its agencies. 4 I also know that whoever labeled this box said that there 5 was bills for collection in it, deposit tickets in it, schedules 6 of canceled checks, schedules of collection, et cetera, on the 7 front of it, and it looks like it's all for fiscal year 1999, 8 which is written on the right-hand side of the box. 9 Q. Do you know what the number in red at the bottom right is 10 for? 11 A. Yes. Initially when the boxes were collected in 12 Albuquerque, New Mexico, before coming to Lenexa, Kansas, there 13 was an inventory database. They referred to it as secure 14 inventory 97. In that database, it was also an inventory of 15 what's in the boxes. You had to capture a unique number for 16 each box. And so it didn't have, I guess, the ability to use 17 the accession number and the labeled box number, like you 18 couldn't use that B00 number on the left and 8 of 51 for it to 19 be its unique number. So instead, we had to go to some third 20 field and give it a unique number, which is that red number on 21 the bottom. 22 Q. Were you involved in designing the secure 97 system? 23 A. Yes. 24 Q. With a contractor? 25 A. Yes.</p>	<p>1 THE COURT: Good afternoon. 2 CROSS-EXAMINATION 3 BY MR. GINGOLD: 4 Q. Ms. Ramirez, my name is Gingold, and I represent the 5 plaintiffs in this litigation. I'd like to ask you some general 6 questions before we go into specifics. Our goal, in accordance 7 with our understanding of this proceeding, is to try to move it 8 as rapidly as possible, and to the extent I'll use as few 9 exhibits as necessary. 10 Let's talk about the easiest issue first, and that's the 11 Lenexa facility. I think the government has provided 12 photographs of numerous aspects of the facility, from the trucks 13 bringing documents in, to the encoding of documents, to the 14 storage, and the various contractors that are working in the 15 facility. Is that your understanding as well? 16 A. Yes. 17 Q. Is there anything that's material with respect to the 18 Lenexa facility that you haven't testified to in response to 19 Mr. Kresse's questions? 20 MR. KRESSE: Objection, Your Honor. 21 THE COURT: I don't even know what the question means. 22 I guess I'll sustain the objection, ask you to rephrase it 23 because of the word material. You're asking her essentially a 24 legal question. 25 BY MR. GINGOLD:</p>
Page 395	Page 397
<p>1 Q. And who was that? Which contractor? 2 A. The accounting firm Chavarria, Dunne & Lamey. 3 Q. Which is now Clifton Gunderson? 4 A. That's correct. 5 Q. And the last exhibit is Defendants' Exhibit 205. What does 6 that show? 7 A. That's an actual bill for collection. It's one of the 8 plies of the seven-ply form itself. 9 MR. KRESSE: Your Honor, that's all I have on direct 10 and I'd like to move these exhibits into evidence. 11 MR. GINGOLD: Objection, Your Honor. 12 THE COURT: I don't know what the objection is, but 13 we'll -- what is the objection, Mr. Gingold? 14 MR. GINGOLD: Your Honor, many of the exhibits have 15 not been authenticated, as you pointed out. In responses to 16 questions were should, should have, could have, maybe, probably. 17 She did not say -- she did not have any basis for determining 18 whether or not there was any accuracy in the records at all. 19 THE COURT: All right. Fair enough. Well, we'll let 20 you cross-examine if you want to on those, but we'll do that 21 after a mid-afternoon break of about 10 minutes. 22 (Recess from 3:07 p.m. to 3:19 p.m.) 23 THE COURT: Are we ready? Mr. Gingold, you may 24 proceed. 25 MR. GINGOLD: Good afternoon, Your Honor.</p>	<p>1 Q. You were involved in at least requesting that the 2 photographs be taken, correct? 3 A. Yes. 4 Q. And you were present with all the photographs? 5 A. Yes. 6 Q. Why were the particular photographs taken and used as 7 exhibits? 8 A. Initially -- 9 MR. KRESSE: Objection. Compound question, 10 Your Honor. 11 THE COURT: Overruled. 12 BY MR. GINGOLD: 13 Q. You can answer the question. 14 A. At the beginning they were taken for the progress report 15 for the Office of Historical Trust Accounting, and then most 16 recently they were taken because I understood that the Judge 17 showed an interest in going to this facility, and in the event 18 that he didn't go, we wanted to show what the facility looked 19 like. 20 Q. So you wanted to give a good picture of what Lenexa is 21 today. 22 A. That would be accurate. 23 Q. And what you considered important in that regard is 24 captured in the photographs; is that correct? 25 A. Me and Ms. Mills, Lena Mills.</p>

Page 398	Page 400
<p>1 Q. Were there a number of other photographs that were taken 2 that weren't used? 3 A. Not that I know of. I thought they were all used. 4 Q. And was there anything else you would have liked to 5 photograph that you didn't? 6 A. None, no. 7 Q. So essentially what -- is it fair to say what you tried to 8 depict in the photographs was the nature of the facility itself? 9 A. That is correct. 10 Q. The type of work that's being conducted in the facility? 11 A. That is correct. 12 Q. The nature of the security of the documents? 13 A. Yes. That would be accurate. 14 Q. The volume of activity that is occurring on a daily or 15 weekly basis? 16 A. I don't know that you get an idea for the volume of 17 activity that's occurring by the pictures that you just saw. 18 Q. How many people are working on any one day in that facility 19 on the record indexing and encoding? 20 A. I'm not too sure about the number that are working on the 21 indexing, which is in that above-ground facility, because I'm 22 not with the Office of Trust Records. They use a contractor, 23 Labat, that's not my contractor. It appears to me that there 24 are about between 50 and 90 people in that facility. 25 Q. How many people are working for you in the facility?</p>	<p>1 statement that this is what we would see if we were there. 2 THE COURT: Anything after Exhibit 221 that was 3 mentioned, 221, 220, 225, 227, 226, and then I lost track of 4 them. 5 MR. KRESSE: Your Honor, if it helps -- 6 THE COURT: We'll do it after. Let's not keep the 7 witness waiting. 8 MR. GINGOLD: I'm just trying to move this along. 9 THE COURT: Go ahead. I'm glad you're trying to move 10 it along. 11 BY MR. GINGOLD: 12 Q. With respect to the old ledgers that were identified in the 13 photographs, I believe what I was able to see on the screen, and 14 my eyes are going too, is the ledgers going back to 1875, is 15 that correct? 16 A. Yes. 17 Q. And the ledgers that went back to 1875 preexist the 18 Allotment Act, the General Allotment Act of 1887, didn't they? 19 A. Yes. 20 Q. So there is money going in to the government and out of the 21 government for payment to individual Indians, correct? 22 A. I don't know that it was to, for individual Indians, 23 because that ledger that you saw showed disbursements and 24 collections, and from what I understand of the history of these 25 agencies that were set up across the United States with these</p>
Page 399	Page 401
<p>1 A. 130, 135. 2 Q. And how many are totally in the facility, whether they're 3 working for you or OTR? 4 A. Well, let's see. Office of Trust Records has between 15 5 and maybe 25 on their side, and I don't know what the number is 6 that's working for the National Archives. 7 Q. So generally speaking, what we saw in the photographs 8 depicts what we would see in snapshots if we visited the 9 facility. Is that a fair statement? 10 A. That would be accurate. 11 Q. And, for example, the boxes that identified the type of 12 information that might be in the particular boxes where you had 13 the descriptions on the outside, that would be what you 14 anticipate were contained in the boxes, correct? 15 A. That is correct. 16 Q. But you yourself didn't actually view the inside of the box 17 and check it, did you? 18 A. That one particular box we had a photograph of? No, I did 19 not open it and view the inside of it. 20 Q. But generally speaking, this is what depicts what we would 21 see, and it's as simple as that, isn't it? 22 A. That is correct. 23 MR. GINGOLD: Your Honor, based on that we wouldn't 24 have any objection to those photographs of the Lenexa facility 25 being admitted. There's no reason to question the witness's</p>	<p>1 superintendents, they conducted a lot of business with private 2 individuals, for these forts that they had set up in these 3 locations across the United States. I don't know that the money 4 that they were collecting was for a particular individual 5 Indian, or it was to buy goods and supplies for the fort itself. 6 I don't know that. 7 Q. That's a fair answer. I'm just trying to get an 8 understanding of the information that you have in Lenexa, at 9 least some of it has nothing to do with individual Indian trust 10 beneficiaries, correct? 11 A. That's correct. 12 Q. And as a matter of fact, some of the oldest ledgers may 13 have nothing to do with the individual Indian trust 14 beneficiaries? 15 A. They may not. 16 Q. And those ledgers that were identified may have nothing to 17 do with the trust, correct? 18 A. That would be correct. 19 Q. But there are ledgers or items that show activity back, I 20 think 1924? I think there are bank checks that were identified 21 to I think an Oklahoma bank, I think, that you identified as 22 perhaps trust beneficiary checks; is that correct? Or am I 23 wrong on that? 24 A. I don't recall. Was it an exhibit? 25 Q. It was one of the photographs, where on the ledger sheet</p>

Page 402	Page 404
<p>1 itself it actually identified the name of a bank at the top of</p> <p>2 the ledger sheet. If it was the name of the bank on the top of</p> <p>3 the ledger sheet, is that your understanding that it relates to</p> <p>4 individual Indian trust money?</p> <p>5 A. What's the question?</p> <p>6 Q. Is the ledger sheet that reflects the name of a bank on the</p> <p>7 top of the ledger sheet, does that indicate that individual</p> <p>8 Indian trust money is included in that ledger, or is it</p> <p>9 something else?</p> <p>10 A. Just because it has the name of a bank on the top of the</p> <p>11 sheet doesn't mean it's individual Indian trust.</p> <p>12 Q. Okay. So none of the ledgers that were identified in the</p> <p>13 photographs may have anything to do with the individual Indian</p> <p>14 trust, correct?</p> <p>15 A. They may or may not.</p> <p>16 Q. But you don't know?</p> <p>17 A. Don't know.</p> <p>18 Q. And that wasn't verified before the photographs were taken.</p> <p>19 A. That's correct.</p> <p>20 Q. Now, with regard to the various exhibits that we went</p> <p>21 through for most of the day prior to the photographs, I think</p> <p>22 you identified a few that you prepared yourself. Is that fair?</p> <p>23 A. That is correct.</p> <p>24 Q. And most of the exhibits you didn't prepare, did you?</p> <p>25 A. I don't know about the word "most," but there were some I</p>	<p>1 Q. Like if \$10 was collected from an agency, and let's say it</p> <p>2 was the Anadarko Agency, did you verify that that \$10 was</p> <p>3 actually collected?</p> <p>4 A. I'm trying to think of how to answer this. Those exhibits</p> <p>5 were obtained from our contractor, an accounting firm, who had</p> <p>6 already reconciled that particular transaction; which is why</p> <p>7 they had those documents at their ready for us to use.</p> <p>8 Q. Again, before we go into the individual exhibits, I want to</p> <p>9 get a clear idea, and I think this has been very helpful. Which</p> <p>10 contractor?</p> <p>11 A. Chavarria, Dunne & Lamey.</p> <p>12 Q. CD&L. When did CD&L reconcile those -- were they</p> <p>13 transactions that were reconciled or accounts that were</p> <p>14 reconciled?</p> <p>15 A. They were transactions.</p> <p>16 Q. And when were they reconciled, do you know?</p> <p>17 A. It would have been '90 something. '95, '96, '97.</p> <p>18 Q. Let me see if I can help you.</p> <p>19 A. Okay.</p> <p>20 Q. If we're dealing with paragraph 19, which was the original</p> <p>21 purpose, was that approximately 1999 or 2000? Or was it prior</p> <p>22 to that?</p> <p>23 A. I think it was prior to that. I don't recall.</p> <p>24 Q. But certainly -- it was certainly not from 2000 forward at</p> <p>25 least to the best of your recollection. Fair statement?</p>
Page 403	Page 405
<p>1 did not.</p> <p>2 Q. We'll go through those exhibits then just to make sure.</p> <p>3 The original exhibits that were identified as part of a</p> <p>4 presentation that you made, do you recall those? I think the</p> <p>5 first presentation was with respect to paragraph 19?</p> <p>6 A. Yes.</p> <p>7 Q. And I think you said subsequently you had presentations</p> <p>8 using the same exhibits for other matters; is that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Now, with regard to the paragraph 19 exhibits that I think</p> <p>11 you even said you prepared for purposes of -- you compiled the</p> <p>12 exhibits for purposes of a presentation on paragraph 19, is that</p> <p>13 a correct statement?</p> <p>14 A. That's correct.</p> <p>15 Q. You compiled the exhibits but you actually didn't prepare</p> <p>16 the individual documents, did you?</p> <p>17 A. Prepare, no.</p> <p>18 Q. Didn't create the documents?</p> <p>19 A. No, did not.</p> <p>20 Q. You didn't create the document and you collected the</p> <p>21 documents and compiled them for purposes of a presentation.</p> <p>22 A. That's correct.</p> <p>23 Q. Did you verify the accuracy of the information in the</p> <p>24 documents?</p> <p>25 A. Like?</p>	<p>1 A. What year, 2004?</p> <p>2 Q. 2000 forward. It was probably not that, correct?</p> <p>3 A. Probably not.</p> <p>4 Q. Okay. So CD&L told you they reconciled those transactions,</p> <p>5 correct?</p> <p>6 A. That would be correct.</p> <p>7 Q. Who at CD&L?</p> <p>8 A. Who?</p> <p>9 Q. Who?</p> <p>10 A. It would be one of the partners, Karen Dunne.</p> <p>11 Q. Did she provide you the work papers so you could review</p> <p>12 them?</p> <p>13 A. No.</p> <p>14 Q. Do you know what she did to collect the information?</p> <p>15 A. She requested the documents from another contractor that we</p> <p>16 had searching the boxes, that were then provided to the</p> <p>17 accounting firm, and then they utilized those.</p> <p>18 Q. When I'm asking you a question as to what you know or don't</p> <p>19 know, I mean to limit it to what information do you know is the</p> <p>20 case, that you can testify to as a matter of fact, not what you</p> <p>21 believe occurred.</p> <p>22 A. All right.</p> <p>23 Q. Do you know how they collected the information?</p> <p>24 A. Do I know?</p> <p>25 Q. What CD&L did to collect the information to support the</p>

Page 406	Page 408
<p>1 transactions they say were reconciled.</p> <p>2 A. Well, if I'm going to a facility every day, and they're at</p> <p>3 the facility with me every day, and I see them put in requests</p> <p>4 to a different contractor every day, and I see documents</p> <p>5 provided back to them every day, I'm under the impression</p> <p>6 they're doing what we told them to do, what we contracted them</p> <p>7 to do, and that would be to collect documents and eventually</p> <p>8 reconcile.</p> <p>9 Q. So you assumed they collected those documents that way, but</p> <p>10 you don't know as a matter of fact, do you?</p> <p>11 A. Okay, I don't.</p> <p>12 Q. Thank you. Again, you've been represented to us as a fact</p> <p>13 witness.</p> <p>14 A. I understand.</p> <p>15 Q. Not as an expert witness.</p> <p>16 A. Understand.</p> <p>17 Q. Thank you. With respect to -- so you don't know what CD&L</p> <p>18 reviewed and didn't consider or considered and excluded in</p> <p>19 providing you information they say are reconciled documents, do</p> <p>20 you?</p> <p>21 A. What they excluded?</p> <p>22 Q. Yes. What did they exclude in the process to provide you</p> <p>23 that information?</p> <p>24 A. I don't know that.</p> <p>25 Q. Do you know how many transactions they reconciled?</p>	<p>1 Q. That's right. You're suggesting, I believe, based on the</p> <p>2 documentation, that this is the practice that occurred. When</p> <p>3 you said the agency should have done this, something would have</p> <p>4 been done that way, you're suggesting that that is a consistent</p> <p>5 practice throughout the agency.</p> <p>6 A. That's correct.</p> <p>7 Q. Were you aware of any audit reports from independent</p> <p>8 certified public accountants that said there was no such</p> <p>9 consistent practice during that period of time?</p> <p>10 A. Yes. I had heard that there were, at least one that I know</p> <p>11 of.</p> <p>12 Q. Which one?</p> <p>13 A. I don't know if it was Arthur Andersen or a different firm.</p> <p>14 Q. But you were -- at least you've heard that, notwithstanding</p> <p>15 your belief right now that there was a consistent practice --</p> <p>16 A. That's correct.</p> <p>17 Q. -- that an independent certified public accountant said</p> <p>18 there was no such consistent practice, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Now, you're making the statement that you believe it was a</p> <p>21 consistent practice. Is this based on your personal</p> <p>22 observations?</p> <p>23 A. Yes.</p> <p>24 Q. Personal observations in the 80 or more agencies?</p> <p>25 A. 90 or more?</p>
Page 407	Page 409
<p>1 A. No, not off the top of my head.</p> <p>2 Q. Do you know how many transactions they couldn't reconcile</p> <p>3 before they were able to provide you that linkage?</p> <p>4 A. No, not off the top of my head.</p> <p>5 Q. Did you ask them?</p> <p>6 A. We require them to provide us reports on what was</p> <p>7 reconciled and therefore what was yet to be reconciled.</p> <p>8 Q. With regard to the particular documents that were used in</p> <p>9 the presentation for paragraph 19, did you ask them what they</p> <p>10 did in order to come up with that particular linkage, what they</p> <p>11 excluded?</p> <p>12 A. No, I did not ask them.</p> <p>13 Q. Did you ask them what they couldn't reconcile before they</p> <p>14 came to the particular link documents that were presented to you</p> <p>15 for presentation in the paragraph 19 search? Or presentation,</p> <p>16 sorry.</p> <p>17 A. No.</p> <p>18 Q. Do you believe those documents are representative of all</p> <p>19 the documents that are at Lenexa?</p> <p>20 A. Yes, I would say they're representative.</p> <p>21 Q. Do you believe the transactions that you described were</p> <p>22 consistently applied in the department and across the bureaus</p> <p>23 and agencies during that period of time the documents are</p> <p>24 reflected?</p> <p>25 A. That they were consistently applied?</p>	<p>1 Q. 80 or more, depending on the period of time, there were 80</p> <p>2 to a hundred agencies if my understanding is correct. Is that</p> <p>3 fair?</p> <p>4 A. I only understood it to be 90 or something.</p> <p>5 Q. Okay. We can get into that.</p> <p>6 A. Okay.</p> <p>7 Q. I was trying to be more conservative. Let's say 90 or</p> <p>8 more. I'll accept your number.</p> <p>9 A. Okay.</p> <p>10 Q. You observed the practices in the 90 or more agencies</p> <p>11 during that period of time?</p> <p>12 A. Not all 90.</p> <p>13 Q. How many?</p> <p>14 A. Oh, let's see. Between 30 and 50 maybe.</p> <p>15 Q. During that particular period of time that the documents</p> <p>16 reflected, you observed those practices in 30 to 50 agencies on</p> <p>17 a consistent basis?</p> <p>18 A. The time that the documents were reflected or the time that</p> <p>19 I was in the eight years in the branch of IIM?</p> <p>20 Q. The time that the documents are reflected.</p> <p>21 A. There was a document that was 1950 something.</p> <p>22 Q. So you couldn't have done that, could you?</p> <p>23 A. That's correct.</p> <p>24 Q. So let's talk about 1989.</p> <p>25 A. Okay.</p>

Page 410	Page 412
<p>1 Q. 1989, did you observe those practices in 30 to 50 agencies?</p> <p>2 A. In some of them, yes.</p> <p>3 Q. In 30 to 50 agencies?</p> <p>4 A. No, not 30 to 50.</p> <p>5 Q. How many?</p> <p>6 A. It took me eight years to eventually visit 30 to 50</p> <p>7 agencies and 10 regional offices. So in '89 I had been in the</p> <p>8 branch probably about a year. I don't know how many agencies I</p> <p>9 had visited at that point.</p> <p>10 Q. Do you have an idea?</p> <p>11 A. No.</p> <p>12 Q. You were the IIM clerk at that time, is that fair?</p> <p>13 A. I was an accountant in the branch of our section of IIM.</p> <p>14 Q. You were an --</p> <p>15 A. Accountant.</p> <p>16 Q. You graduated with a degree in accountancy; is that</p> <p>17 correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And you're eligible to take the CPA exam, correct?</p> <p>20 A. That's correct.</p> <p>21 Q. And you took the CPA exam?</p> <p>22 A. Yes, I did.</p> <p>23 Q. And you're licensed in New Mexico?</p> <p>24 A. No, I did not pass the exam. I do not have my license.</p> <p>25 Q. For purposes of Interior, you don't have to be a CPA to be</p>	<p>1 Q. Did you ever talk to Andersen employees about the nature of</p> <p>2 the audit and issues that were being raised?</p> <p>3 A. No, not about the nature of the audit or issues that were</p> <p>4 being raised, no.</p> <p>5 Q. What did you talk to them about?</p> <p>6 A. About how the process worked, why did it work like this,</p> <p>7 where are these documents at.</p> <p>8 Q. And did they have any discussion with you at that point as</p> <p>9 to whether or not they felt practices were consistent within the</p> <p>10 Bureau of Indian Affairs at that time?</p> <p>11 A. No, they didn't have those discussions with me.</p> <p>12 Q. But you heard rumors that they found that they were not</p> <p>13 consistent, correct?</p> <p>14 A. When the eventual audit was completed, I heard that.</p> <p>15 Q. Did you read the report itself?</p> <p>16 A. No, I did not.</p> <p>17 Q. Did anyone offer it to you?</p> <p>18 A. Yes, they did.</p> <p>19 Q. Was it Mr. Parris?</p> <p>20 A. It probably was.</p> <p>21 Q. Now, in the hierarchy at OTFM at that time was it</p> <p>22 Mr. Parris as the director?</p> <p>23 A. Well, initially he was a branch chief and then a division</p> <p>24 chief and then a director.</p> <p>25 Q. And then was Ms. Erwin brought in sometime, Donna Erwin?</p>
Page 411	Page 413
<p>1 an accountant?</p> <p>2 A. That's correct, you do not.</p> <p>3 Q. What are the qualifications at Interior for an accountant?</p> <p>4 A. So many hours of accounting and certain number of years</p> <p>5 experience.</p> <p>6 Q. Is it 24 hours?</p> <p>7 A. I don't recall.</p> <p>8 Q. And years of experience as an accountant?</p> <p>9 A. Correct.</p> <p>10 Q. So you can be -- and that's the years of experience, I</p> <p>11 think you said you were with Arthur Andersen before --</p> <p>12 A. Yes. I was with Andersen and Llewellyn & Company.</p> <p>13 Q. And how many years was that?</p> <p>14 A. That was two years all together.</p> <p>15 Q. And then you went to the Department of the Interior.</p> <p>16 A. Correct.</p> <p>17 Q. Now, did you work with Arthur Andersen while you were at --</p> <p>18 when you were the IIM clerk at Interior at all?</p> <p>19 A. I don't think I worked with them until -- no, I did. I</p> <p>20 worked with them when I was an accountant in the branch.</p> <p>21 Q. And did they -- was it during the audit, is that correct?</p> <p>22 A. I'm pretty sure it was an audit that they were performing,</p> <p>23 yes.</p> <p>24 Q. Was it the FY89 and FY88 audits?</p> <p>25 A. That sounds about right.</p>	<p>1 A. Yes, she was.</p> <p>2 Q. And she was brought in in what position?</p> <p>3 A. As the deputy director.</p> <p>4 Q. Did you report to Ms. Erwin?</p> <p>5 A. No. I would have reported to a division chief, but</p> <p>6 eventually to Donna, yes.</p> <p>7 Q. Who did you report to?</p> <p>8 A. Don Gray was the division chief for a while.</p> <p>9 Q. So before we go through, we're going to be going through,</p> <p>10 Your Honor, a document identified as Plaintiffs' 126, which is</p> <p>11 the Arthur Andersen audit report for 1989 and 1988.</p> <p>12 MR. KRESSE: Your Honor, this is beyond the scope of</p> <p>13 the direct.</p> <p>14 MR. GINGOLD: Your Honor, this deals directly with the</p> <p>15 questions as to whether or not the exhibits that were introduced</p> <p>16 are representative of what was occurring in the Department at</p> <p>17 that time.</p> <p>18 MR. KRESSE: The exhibits that I believe</p> <p>19 Mr. Gingold --</p> <p>20 THE COURT: It's going to come in sooner or later.</p> <p>21 I'll allow it. Let's go.</p> <p>22 BY MR. GINGOLD:</p> <p>23 Q. Let's deal with Defendants' 206, for example, which was one</p> <p>24 of the exhibits I think that involved a bill for collection, a</p> <p>25 calculation of money, it involved -- I think there was a total</p>

Page 414	Page 416
<p>1 that was approximately -- I think it was \$24,000 on the bottom 2 of the page. You may have seen this, you've seen it a lot more 3 than I have, so you may be more familiar with it. 4 But one of the questions I want to ask you is this: When 5 these exhibits were put together, was the information at least 6 verified as being accurately calculated? 7 A. Like was the face of that bill for collection accurate? 8 Q. For example, if you had a total of \$24,000, would the 9 number of credits equal that total of \$24,000, to the best of 10 your knowledge? 11 A. Yes. 12 Q. Maybe you can explain something to me, then. In Exhibit 13 206, it's Defendant's 206 -- and I'm doing this based on my 14 handwritten notes too, so bear with me a little bit. The total 15 was approximately \$24,000? 16 MR. KRESSE: Your Honor, the defendants could put this 17 exhibit up if it would be helpful. 18 THE COURT: Well, put it up. 19 MR. GINGOLD: Your Honor, I don't have any control 20 over that. 21 THE DEPUTY CLERK: In speaking with Mr. Cramer, he 22 wanted me to ask you if you hit the function F keys. You have. 23 Okay. Let me switch it back, then. 24 MR. GINGOLD: Your Honor, this is the reason some of 25 us like paper documents.</p>	<p>1 A. That's correct. 2 Q. Was this intentional to demonstrate that some of the 3 documentation at Lenexa is incomplete? 4 A. No. 5 Q. Okay. But this, based on your testimony, is consistent 6 with the practices during the period of time that you were at 7 the Department of Interior? 8 A. That they would continue beyond one page, yes, they would. 9 Q. No, that there would be documents that -- 10 MR. KRESSE: Your Honor, he's not letting the witness 11 finish her answer. 12 THE COURT: I think she did finish the answer. Go 13 ahead. 14 THE WITNESS: I'm done. 15 BY MR. GINGOLD: 16 Q. That there would be documents -- if you find documents at 17 Lenexa, the documents may not be complete but they may be 18 related to the subject matter; is that correct? 19 A. No. That's not what I was saying. 20 Q. Okay. When you said consistency, what did you mean? 21 A. I meant that it's consistent that you would have a bill for 22 collection that is more than one page. 23 Q. Is it consistent that you would find documents that aren't 24 complete? 25 A. In Lenexa?</p>
Page 415	Page 417
<p>1 THE COURT: Try putting the defense table up. 2 THE DEPUTY CLERK: I switched back to defense now. 3 THE COURT: There you go. 4 THE DEPUTY CLERK: We're going to try one more time. 5 Your assistants asked me one more time to switch back one more 6 time and see if it works. No? Okay. 7 THE COURT: Okay. 8 MR. GINGOLD: If you can bear with me, Your Honor, 9 because I'm asking defendants for assistance. If we can have as 10 much of the page as possible down to the total of 24,000 -- 11 where it's readable for some of us who can't read this. Yeah. 12 If you go down a little bit more. If you could drop it a bit, 13 please, to the total. The total, there it is. \$24,300. 14 BY MR. GINGOLD: 15 Q. I'm not a mathematician, but I've added that up and that 16 comes up to approximately \$7,372.77, and it shows a total on the 17 right, if I can read this correctly, of \$24,300.01. Can you 18 explain that? 19 A. It looks like this is more than a one-page document, 20 because of the word continued right in front of the 24,000. So 21 there are more pages to this particular bill for collection that 22 would eventually add up to 24,300.01. 23 Q. You assume. 24 A. Okay. I assume. 25 Q. Looks like we have some missing pages, don't we?</p>	<p>1 Q. Correct. 2 A. You could. 3 Q. As a matter of fact, you've had experience with contractors 4 who have told you that the boxes weren't complete, correct? 5 A. What do you mean when you say the boxes aren't complete? 6 Q. You say -- I think you index boxes and identified 7 inventories of files in boxes, correct? 8 A. Yes. They would inventory boxes, yes. 9 Q. Were you ever told for example by NORC that boxes that they 10 searched relating to the activity they're engaged in in the 11 litigation support accounting did not contain the information 12 that was reflected in the index or inventory? 13 A. No. NORC never told me that. 14 Q. Did anybody tell you that? 15 A. Yes. I had heard that from others. 16 Q. And were you also told the description of the contents of 17 the box on the outside of the box didn't match the contents on 18 the inside of the box? 19 A. I have heard that on occasion. 20 Q. And were you also told that some of the boxes had nothing 21 at all in them, notwithstanding what was reflected on the 22 outside of the box? 23 A. I heard about that once, yes. 24 THE COURT: A lot of hearsay coming into this trial. 25 BY MR. GINGOLD:</p>

21 (Pages 414 to 417)

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Page 418	Page 420
<p>1 Q. Well, it's because you haven't actually inventoried the</p> <p>2 boxes yourselves, have you?</p> <p>3 A. That's correct, I do not.</p> <p>4 Q. And you haven't actually verified any of the information</p> <p>5 contained in the documents that you testified to in response to</p> <p>6 Mr. Kresse's question, did you?</p> <p>7 A. If you mean verified like did I reconcile the transaction?</p> <p>8 No. Did I track a particular transaction from a ledger to a</p> <p>9 bill to a something to a something? Yes.</p> <p>10 Q. Well, that was tracked by CD&L and it was given to you,</p> <p>11 wasn't it?</p> <p>12 A. I understand, yes.</p> <p>13 Q. So you were given tracked documents to review, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Now, bills of collection -- deposits don't reflect</p> <p>16 individual Indian trust beneficiary accounts, do they?</p> <p>17 A. Deposit ticket itself does not normally quote an account</p> <p>18 holder's account.</p> <p>19 Q. And bills of collection don't either, do they?</p> <p>20 A. Normally they do not.</p> <p>21 Q. And the CP&R data you've referred to, I think you've</p> <p>22 testified -- and please correct me if I'm wrong, because I don't</p> <p>23 want to misstate your testimony. I think you said information</p> <p>24 provided by Interior to Treasury is included in the CPR</p> <p>25 database; correct?</p>	<p>1 BY MR. GINGOLD:</p> <p>2 Q. Do you know whether or not Treasury has verified the</p> <p>3 information in the CPR tapes?</p> <p>4 A. Well, if a report comes back from Treasury that has certain</p> <p>5 check information on it that equals the database that we have,</p> <p>6 is that what you would call verification? Is that the word</p> <p>7 you're using?</p> <p>8 Q. What is your understanding of verification?</p> <p>9 A. We're going in a circle here.</p> <p>10 Q. Excuse me. You just testified that the information that</p> <p>11 goes to CPR is Interior Department information, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. It's not Treasury Department information; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. So the question I asked you is do you know whether or not</p> <p>16 the Department of the Treasury verified the accuracy of the</p> <p>17 information that your agency provided to them.</p> <p>18 A. When a check clears a bank, at that point that's</p> <p>19 verification coming from Treasury, because they take the</p> <p>20 information from a financial institution, run it through their</p> <p>21 CP&R system, and then feed the information back to the</p> <p>22 Department of Interior whether it does or does not match.</p> <p>23 Q. Doesn't Treasury report the same information to you that</p> <p>24 you reported to Treasury?</p> <p>25 A. Yes.</p>
Page 419	Page 421
<p>1 A. That's correct.</p> <p>2 Q. So the CPR database that comes back to you, the CPR</p> <p>3 database, that's Interior information, correct?</p> <p>4 A. You could say that.</p> <p>5 Q. So it should match a hundred percent all the time,</p> <p>6 shouldn't it?</p> <p>7 A. Okay. Are you accounting for human error? Automated</p> <p>8 error?</p> <p>9 Q. So there are potential problems with errors, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And as a matter of fact, you've also heard that the CP&R</p> <p>12 database has been overwritten periodically, correct?</p> <p>13 A. No. I never heard that.</p> <p>14 Q. You've never heard that?</p> <p>15 A. Never.</p> <p>16 Q. Have you heard that CPR tapes are missing?</p> <p>17 A. No. Never heard that.</p> <p>18 Q. Have you heard whether or not the Treasury Department</p> <p>19 verified any of the information contained in the CPR tapes?</p> <p>20 MR. KRESSE: Objection. Beyond the scope of the</p> <p>21 direct examination.</p> <p>22 THE COURT: I thought you were going to object to the</p> <p>23 "have you heard," and I'll sustain that objection.</p> <p>24 MR. GINGOLD: Your Honor, I'll go as far as I can go</p> <p>25 without the objections. But I understand.</p>	<p>1 Q. Thank you. A couple of general questions. Again, because</p> <p>2 we have some mechanical problems or technological, I'm not going</p> <p>3 to go into the exhibits I wanted to talk to you about. However,</p> <p>4 with regard to the mass cancellation that you discussed, I think</p> <p>5 you described in some detail of the efforts that were taken to</p> <p>6 try and correct the debits to individual Indian trust</p> <p>7 beneficiary accounts that occurred as a result of the mass</p> <p>8 cancellation of checks. Is that a fair statement?</p> <p>9 A. You said that we tried to correct --</p> <p>10 Q. There were debits to the accounts, and the debits to the</p> <p>11 accounts were caused by checks that were written that were</p> <p>12 canceled, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And I think, at least I understood your testimony to mean</p> <p>15 you were describing the actions taken by the Interior Department</p> <p>16 to correct the debited entries because the checks were canceled</p> <p>17 and the beneficiaries received no funds. Is that a fair</p> <p>18 statement?</p> <p>19 A. No. I would say to refund, not correct. When you say</p> <p>20 correct, I get the impression that it was incorrect.</p> <p>21 Q. Okay. Let me -- I'm sorry for being ambiguous. When the</p> <p>22 check was written, the account was debited, correct?</p> <p>23 A. Correct.</p> <p>24 Q. But the individual never received the funds, correct?</p> <p>25 A. Correct.</p>

Page 422	Page 424
<p>1 Q. So your goal was to restore the account to the condition 2 prior to the debit, correct? 3 A. That's correct. 4 Q. Now, let me ask you this question. I think you also said 5 that appropriated funds were necessary to accomplish that task? 6 A. Correct. 7 Q. Help me with this, then. When the check is written, is -- 8 the 14X6039 account is debited, correct? 9 A. That's correct. 10 Q. And the funds are actually transferred, or the credits are 11 actually transferred to the general Treasury, correct? They 12 don't leave the Treasury Department, correct? 13 A. That's correct. 14 Q. So the funds are in Treasury, in the general Treasury 15 account, correct? 16 A. That's correct. 17 Q. If the funds are still in Treasury, why did you need 18 appropriations? Why couldn't you just reverse the transaction? 19 A. Because you can't go to a different agency and get their 20 money. They have to give it to you. Treasury did not give it 21 to us. 22 Q. This was individual Indian trust money, not agency money, 23 correct? 24 A. That's correct. 25 Q. And the money was still held at Treasury, correct?</p>	<p>1 THE COURT: Mr. Gingold, you're starting to argue with 2 the witness about this, and just let me see if my understanding 3 of this is correct, because I don't think we need to spend a lot 4 more time on this issue. As I understand the witness's 5 testimony, after the statute was enacted and after the checks 6 were canceled, BIA realized that some of the money that had been 7 canceled was trust money, and it said to the Treasury, that's 8 trust money, you can't take it away, and Treasury said, tough, 9 you're not getting it back. That's why they had to go to 10 Capitol Hill. 11 So as I understand, BIA asked for it, Treasury refused it, 12 they went up to Capitol Hill and got an appropriation. Is that 13 correct? 14 THE WITNESS: That is correct. 15 THE COURT: All right. What's your next question? 16 MR. GINGOLD: Your Honor, there's one aspect of that 17 that may be important to consider. The money is the trust 18 money, not the agency's money, and it remained in the Treasury. 19 THE COURT: I think that's what she said. But 20 Treasury wouldn't give it back. 21 BY MR. GINGOLD: 22 Q. Did they explain to you why they wouldn't give it back? 23 A. Yes. In that one particular exhibit, I don't know the 24 exhibit number, there was the letter from Treasury to Dr. Brown 25 that explained that it was due to the disbursing authority, that</p>
Page 423	Page 425
<p>1 A. Correct. 2 Q. But it was your understanding, because individual Indian 3 trust money was transferred from one account at Treasury to 4 another account at Treasury; that it was no longer individual 5 Indian trust money? 6 A. No, that's not my understanding, that it's no longer 7 individual -- no. 8 Q. Then what is it? 9 A. It's money that is set aside for individual Indians. 10 Q. It's still being held by Treasury, correct? 11 A. That's correct. 12 Q. Was there a regulation that you're following in order -- 13 that prevented you from having the transaction reversed? 14 A. From what I understand, if you want money from one 15 agency -- no. If one agency is transferring money to a 16 different agency, there's a form that's filled out and an action 17 that's taken. If you want to go get money from the GAO or IRS 18 or whomever, you don't fill out the form and there you go, you 19 got it. You have to fill out a form, signatures are obtained, 20 and then a transfer occurs. So just because I wanted the money 21 back that belonged to these individual Indians doesn't mean I go 22 to Treasury and get it. 23 Q. Well, the money is held at Treasury, not in Interior, 24 correct? 25 A. Yes, that's correct.</p>	<p>1 they did not have to give the money back. 2 THE COURT: Exhibit number is 230. 3 MR. GINGOLD: Your Honor, the equipment is now 4 operating. 5 THE COURT: Good. 6 MR. GINGOLD: If I may, Your Honor, I was going to 7 these other exhibits because I wasn't -- so, Your Honor, I 8 will -- 9 BY MR. GINGOLD: 10 Q. Whatever happened on the mass cancellation happened, and to 11 the extent money was restored it was restored. Is that fair? 12 A. That's correct. 13 Q. Let's go to Plaintiffs' 126. Are you able to read this, 14 Ms. Ramirez, or do we need to make it larger? 15 A. That's good. 16 Q. I referenced earlier the audit report of Arthur Andersen. 17 This is the audit report that I was mentioning to you. Did you 18 ever see this before? 19 A. It looks familiar. 20 Q. So you may have read it -- 21 MR. KRESSE: Your Honor, objection. She hasn't seen 22 anything more than the title of this document. 23 MR. GINGOLD: Your Honor, she answered the question. 24 THE WITNESS: Yes, the title page looks familiar. 25 THE COURT: Overruled. Proceed.</p>

Page 426	Page 428
<p>1 BY MR. GINGOLD: 2 Q. I'd like to turn to page 3. And Your Honor, the pages that 3 I'm referencing are not the page numbers at the bottom of the 4 page. It's how the exhibit was produced. 5 Page 3, as you can see, Ms. Ramirez, is the letterhead of 6 Arthur Andersen, "Report of independent public accountants, May 7 11, 1990." Do you see that? 8 A. Yes, I see it. 9 Q. Again, have you seen this before or to -- 10 A. This page does not look familiar. 11 Q. Do you know -- have you heard whether or not this was the 12 first audit that was done in the history of the trust? 13 MR. KRESSE: Objection, Your Honor. Seeks hearsay. 14 THE COURT: Sustained. 15 BY MR. GINGOLD: 16 Q. Do you know whether this is the first audit that was 17 performed in the history of the trust? 18 A. I have heard that it was. 19 MR. KRESSE: Your Honor, same objection. 20 THE COURT: All right. Look, these are frankly 21 rhetorical points, counsel. I don't care whether or not it was 22 the first audit ever done. You've made your point. Ask your 23 next question. 24 MR. KRESSE: Your Honor, by the way, we don't see this 25 as Plaintiffs' Exhibit 126.</p>	<p>1 discussions with Arthur Andersen about that particular issue? 2 A. I don't recall. 3 Q. Okay. The second item says, "Because of major inadequacies 4 in the accounting records and related systems used to account 5 for the tribal and individual Indian monies trust managed by the 6 Bureau," this relates to why there has to be a qualified report. 7 So we'll go into that a little bit. Were you aware that there 8 were questions about the inadequacies of the accounting records 9 and systems at the time? 10 A. That there were inadequacies in the what? 11 Q. Accounting records and systems. 12 THE COURT: I'm beginning to wonder whether I should 13 have sustained that beyond the scope objection, Mr. Gingold. 14 What this witness has told us basically about paper flow, she 15 hasn't said anything about an audit. She told us about the mass 16 cancellation and she showed me that -- she gave me a slide show 17 about Lenexa. I don't know why you need to turn her into a 18 witness to either verify or not verify an Arthur Andersen audit 19 that was done in 1990. 20 MR. GINGOLD: Well, this is an audit that was 21 contemporaneous with documents that were introduced or 22 identified. 23 THE COURT: Well, let me tell you what I take from 24 these exhibits that you are so upset about. I do not think that 25 I heard this witness say that all of these exhibits that show</p>
Page 427	Page 429
<p>1 MR. GINGOLD: Well, no, we have two numbers. We have 2 0575. It's also 126 there. 3 MR. KRESSE: That's for this trial? 4 MR. GINGOLD: Yes. 5 THE COURT: Proceed, sir. 6 MR. GINGOLD: Thank you. 7 BY MR. GINGOLD: 8 Q. I'd like you to turn to the bottom of this page that we are 9 looking at, which is page 3, not page 1 of the -- there's a page 10 1 in the middle of the page, but it's the third page in this 11 exhibit. And could you just read the last paragraph and the 12 first paragraph of the next page? 13 THE COURT: Read it to yourself. 14 MR. GINGOLD: That's what I intended. 15 THE WITNESS: Do I need to read it out loud? 16 MR. GINGOLD: No. Please read it to yourself. 17 (Witness reviewing document.) 18 THE WITNESS: All right. It continues. 19 BY MR. GINGOLD: 20 Q. Do you see with respect to this exhibit that with regard to 21 item No. 1, that cash balances -- "cash and balances held in 22 trust for Indian tribes, organization, individuals cannot be 23 readily confirmed"? Do you see that? 24 A. Yes, I see that. 25 Q. Now, during the period of time you were there, did you have</p>	<p>1 how the paperwork worked were invariably correct or were error 2 free or were used in every office or that they demonstrate the 3 perfection of the system. I heard her to be showing me how a 4 typical paperwork exercise would work. 5 Now, I don't know how you can cross-examine that except to 6 say, well, that isn't how it worked or it never worked that way. 7 I think if you asked her -- I think in fact I'll ask her myself. 8 Ms. Ramirez, you showed me an SF 1098, you showed me an oil 9 and gas mining lease, you showed me a bill for collection, you 10 showed me a schedule of collections, you showed me a certificate 11 of deposit, a title status report, a journal voucher, a ledger 12 card, and a 139B with a daily disbursement report. I gather 13 that was to show me how the paperwork generally worked during 14 that era. 15 THE WITNESS: That's correct. 16 THE COURT: Are you telling me that it always worked 17 that way? 18 THE WITNESS: No. It did -- 19 THE COURT: Are you telling me that there were no 20 human mistakes? 21 THE WITNESS: No, I'm not saying that. 22 THE COURT: Are you telling me that these documents 23 all exist and didn't get lost and eaten up by rats and dumped on 24 by birds? 25 THE WITNESS: I'm not saying that either.</p>

24 (Pages 426 to 429)

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Page 430	Page 432
<p>1 THE COURT: Your witness, Mr. Gingold.</p> <p>2 MR. GINGOLD: Your Honor, there's another aspect to</p> <p>3 this. For most of the period of the trust, the superintendents</p> <p>4 of the agencies handled the transactions, not the central office</p> <p>5 in Washington and not Albuquerque. So what --</p> <p>6 BY MR. GINGOLD:</p> <p>7 Q. Is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. As a matter of fact, the superintendents themselves issued</p> <p>10 checks, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And whether or not these particular documents reflected the</p> <p>13 transaction, you can't say that they reflected a transaction in</p> <p>14 any of the agencies other than the one you're looking at at any</p> <p>15 time, can you?</p> <p>16 A. For the period of time when I was in the branch of IIM, or</p> <p>17 in the documentation that I saw when I was in the branch of IIM,</p> <p>18 that's what I know it to be. For any other time, no, I couldn't</p> <p>19 tell you.</p> <p>20 Q. And didn't superintendents have autonomy to handle</p> <p>21 transactions for the most part the way they wanted to?</p> <p>22 A. At the onset, they did.</p> <p>23 Q. How long did the onset go?</p> <p>24 A. I have no idea.</p> <p>25 Q. Do you know when it stopped?</p>	<p>1 hasn't been resolved in order to introduce these into evidence.</p> <p>2 THE COURT: Okay. Well, the documents will all be</p> <p>3 received and you can argue later on about what they mean.</p> <p>4 MR. QUINN: Our next witness will be Michelle Herman.</p> <p>5 THE COURT: All right. Ms. Ramirez, thank you.</p> <p>6 (The witness steps down.)</p> <p>7 MR. QUINN: Good afternoon, Your Honor. Michael Quinn</p> <p>8 for the government. My witness will be right along. I had just</p> <p>9 come in to check on proceedings and she had taken that</p> <p>10 opportunity to go use the restroom. So she'll be here</p> <p>11 momentarily.</p> <p>12 I did understand from my colleagues, Your Honor, that you</p> <p>13 were interested in getting a little preview from counsel as to</p> <p>14 what the witness -- we expect the witness to testify about. I'm</p> <p>15 prepared to do that now if you like, while we wait.</p> <p>16 THE COURT: Go ahead.</p> <p>17 MR. QUINN: Ms. Michelle Herman is a managing director</p> <p>18 of the consulting firm of FTI. She held previous positions with</p> <p>19 other accounting firms, beginning in 1995 with Arthur Andersen,</p> <p>20 and had begun work on the historical accounting in the Cobell</p> <p>21 litigation in her early positions with Arthur Andersen.</p> <p>22 She then moved to a similar position at KPMG and continued</p> <p>23 to do work in connection with the examination of data, study of</p> <p>24 the electronic data sets, and investigation of the accounting</p> <p>25 records that the Department of the Interior had for IIM</p>
Page 431	Page 433
<p>1 A. No.</p> <p>2 MR. GINGOLD: Your Honor, we probably don't have any</p> <p>3 further questions in that regard, then.</p> <p>4 BY MR. GINGOLD:</p> <p>5 Q. But as a result, you gave us a snapshot in time with regard</p> <p>6 to a linked transaction provided by CD&L. And that's it, isn't</p> <p>7 it?</p> <p>8 A. That's correct.</p> <p>9 MR. GINGOLD: No further questions, Your Honor.</p> <p>10 THE COURT: Thank you. Got another witness?</p> <p>11 MR. KRESSE: Your Honor, as to the motion to move</p> <p>12 these exhibits into evidence, is there -- in the interest of</p> <p>13 saving time --</p> <p>14 THE COURT: Yeah. Mr. Gingold made, I think, an</p> <p>15 authenticity objection, but I had understood that authenticity</p> <p>16 was not going to be a problem in this trial unless there was</p> <p>17 some specific claim of an inauthentic document. So unless</p> <p>18 there's some specific objection to some of these, all of the</p> <p>19 exhibits shown to Ms. Ramirez will be received in evidence, with</p> <p>20 my understanding as I've just described about what they mean,</p> <p>21 and the weight of them is open for argument later on.</p> <p>22 MR. GINGOLD: Your Honor, we believe there is no</p> <p>23 testimony as to who created the documents, what information was</p> <p>24 used, when they were prepared. We understand your view on</p> <p>25 authenticity in a way, but we believe there's too much that</p>	<p>1 accounts. She's continued that work over the last -- since</p> <p>2 1996, almost over the entire length of this case.</p> <p>3 Ms. Herman has been involved with the data completeness</p> <p>4 validation testing that's just been reported on, the reports</p> <p>5 that were issued on September 30 of this year that we've marked</p> <p>6 as exhibits in this case for the purposes of the hearing. She's</p> <p>7 also performed and overseen people doing the account</p> <p>8 reconciliations as part of the actual testing of sampled</p> <p>9 accounts, testing of high-dollar value transactions, and part of</p> <p>10 the historical accounting work, and has also worked with the</p> <p>11 Office of Historical Trust Accounting in terms of developing the</p> <p>12 historical statements of account, effectively what kind of</p> <p>13 information those accounts would -- statements would provide to</p> <p>14 beneficiaries.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. QUINN: With that, I'd like to ask the witness,</p> <p>17 call Ms. Herman to the stand.</p> <p>18 THE COURT: All right.</p> <p>19 MICHELLE HERMAN, WITNESS FOR THE GOVERNMENT, SWORN</p> <p>20 THE COURT: Particularly with that introduction you've</p> <p>21 already given me, Mr. Quinn, you don't have to give me much</p> <p>22 background.</p> <p>23 MR. QUINN: I understand that, Your Honor. I'll</p> <p>24 attempt to do that. The only place I would like a little</p> <p>25 leeway, Your Honor, is with respect to making a record of the</p>

Page 434	Page 436
<p>1 extent to which she's been involved in the data analysis over 2 time.</p> <p>3 DIRECT EXAMINATION</p> <p>4 BY MR. QUINN:</p> <p>5 Q. Good afternoon, Ms. Herman.</p> <p>6 A. Good afternoon.</p> <p>7 Q. Could you state your name for the record, please?</p> <p>8 A. Michelle Herman.</p> <p>9 Q. And for the record, give your position and the name of the 10 company where you're employed.</p> <p>11 A. I'm a managing director at FTI Consulting.</p> <p>12 Q. Were you here for my summary of your work experience for 13 the Court?</p> <p>14 A. No, I'm sorry, I was not.</p> <p>15 Q. What particular area of FTI do you work with?</p> <p>16 A. I work in the financial and enterprise data analytics 17 practice.</p> <p>18 Q. Financial and enterprise data analytics?</p> <p>19 A. Yes.</p> <p>20 Q. Could you describe what the general nature is of the kind 21 of work that you do in that group?</p> <p>22 A. Typically our group is involved in large class action 23 lawsuits, and fundamentally analyzing large transactional and 24 operational data sets.</p> <p>25 Q. And I take it since you're sitting here on the stand today,</p>	<p>1 over time, okay?</p> <p>2 Ms. Herman, do you see that on your screen, the first 3 slide?</p> <p>4 A. Yes, I do.</p> <p>5 Q. It's titled -- this is, for the record, this is from the 6 administrative record, this is marked as AR 5-65 with a title 7 page of "Historical Accounting Project." Can you read that 8 okay?</p> <p>9 A. Yes, I can.</p> <p>10 Q. Have you seen this document before?</p> <p>11 A. Yes, I have.</p> <p>12 Q. Could you describe it for the Court?</p> <p>13 A. This is the historical accounting plan, as we refer to it, 14 the green plan.</p> <p>15 Q. Green plan. And is that the plan from 1997?</p> <p>16 A. This is the 2007 plan.</p> <p>17 Q. Okay. Have you seen this before?</p> <p>18 A. Yes, I have.</p> <p>19 Q. Have you seen the 2003 plan?</p> <p>20 A. Yes, I did.</p> <p>21 Q. What do you commonly refer to that as?</p> <p>22 A. The purple plan.</p> <p>23 Q. Go to the second slide of this same exhibit, Ms. Herman, 24 and put up there page 5 from the 2007 plan. And if we could 25 zoom in on the highlighted text there. Do you see that</p>
Page 435	Page 437
<p>1 that you have had some involvement with the Cobell lawsuit and 2 the historical accounting?</p> <p>3 A. Yes, I have.</p> <p>4 Q. When did you first become involved with any aspect of the 5 historical accounting work?</p> <p>6 A. In early 1997.</p> <p>7 Q. And in what way did you become involved with the historical 8 accounting in 1997?</p> <p>9 A. I received a data set from the Office of Trust Funds 10 Management and I was asked to aggregate all of that information 11 into a single database.</p> <p>12 Q. Was there a particular computer system that you were 13 working with at that time?</p> <p>14 A. Yes. The Integrated Records Management System, IRMS.</p> <p>15 Q. IRMS, okay. And you have testified once before in this 16 case; is that right?</p> <p>17 A. Yes, I have.</p> <p>18 Q. Do you recall what part of the case you testified in?</p> <p>19 A. Trial 1.5.</p> <p>20 Q. And were you testifying as a fact witness or an expert 21 witness?</p> <p>22 A. As a fact witness.</p> <p>23 Q. Let's see if we could give the Court a sense of the 24 experience you've had in working with the data and the 25 accounting information that you've seen and come in contact with</p>	<p>1 description on the accounting firms?</p> <p>2 A. Yes, I do.</p> <p>3 Q. Could we scroll down to the bottom. This is document 4 33-2-7, page 5 of the 1997 -- 2007 plan. In there there's a 5 description of five accounting firms under contract to Interior 6 to assist with the historical accounting. Do you see your firm 7 identified there?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And it refers to FTI Consulting is conducting 10 forensic accounting work?</p> <p>11 A. Yes, it does.</p> <p>12 Q. Among other firms. Do you recognize the other firm names?</p> <p>13 A. Yes. These are the other firms participating in the 14 historical accounting effort.</p> <p>15 Q. Have you done work with these other firms in the course of 16 your work on the historical accounting?</p> <p>17 A. Yes, with each of these firms.</p> <p>18 Q. What type of work is involved with the forensic aspect 19 that's referenced there for your firm as FTI?</p> <p>20 A. We evaluate both the electronic historical data as well as 21 the hard copy records; the journal vouchers, the bills for 22 collection, the transaction registers, things of that nature.</p> <p>23 Q. Let's go to the next page, the slide also from this 2007 24 plan, and zoom in -- this is page 6 from the 2007 plan. Do you 25 see that highlighted section on page 6?</p>

Page 438	Page 440
<p>1 A. Yes, I do.</p> <p>2 Q. It references steps in the historical accounting process</p> <p>3 and summarizes those steps. Refers to step 1 being the first</p> <p>4 step of the historical accounting, to gather data posted to each</p> <p>5 account, and then it goes on further in that paragraph to</p> <p>6 reference, "the data exist in electronic ledger accounting</p> <p>7 systems or paper ledgers that were used to maintain the IIM</p> <p>8 accounts." Did you participate in this work?</p> <p>9 A. Yes. Our firm was primarily responsible for gathering this</p> <p>10 data.</p> <p>11 Q. Okay. Could you summarize for the Court just briefly at</p> <p>12 this point the kind of work that you did in terms of the</p> <p>13 gathering of the electronic information?</p> <p>14 A. Yes. We received information from two electronic</p> <p>15 accounting systems. As I mentioned first, IRMS, the integrated</p> <p>16 records management system, and TFAS, the trust funds accounting</p> <p>17 system.</p> <p>18 Q. A little bit farther down on that same page of AR 5-65, it</p> <p>19 has a step 2. We've highlighted a couple of sentences there.</p> <p>20 It refers to a second step in the historical accounting: "To</p> <p>21 conduct reconciliation of transactions to determine their</p> <p>22 accuracy." Have you been involved in that part of the</p> <p>23 historical accounting?</p> <p>24 A. Yes, I have.</p> <p>25 Q. Could you summarize briefly for the Court the nature of</p>	<p>1 Q. So you were looking at the financial transactions.</p> <p>2 A. Yes, we were.</p> <p>3 Q. Did you play any role in the development of tests for how</p> <p>4 the OHTA would analyze those transactions?</p> <p>5 A. Yes, I did.</p> <p>6 Q. Go to the next slide, please. I'd like to have you look at</p> <p>7 another page a little bit over on the plan also, identifying --</p> <p>8 summarizing step 3 of the historical accounting project. Step</p> <p>9 3, the plan refers to after gathering the transaction data,</p> <p>10 reconciling, other tests being performed, the Interior would be</p> <p>11 in a position to prepare the HSAs. What do you understand HSA</p> <p>12 to be?</p> <p>13 A. Historical statement of account.</p> <p>14 Q. Have you had any role in step 3 as described there in the</p> <p>15 plan?</p> <p>16 A. Yes, I have.</p> <p>17 Q. Could you just summarize for the Court what your role has</p> <p>18 been in that regard?</p> <p>19 A. I created the draft statements that were provided to the</p> <p>20 Court.</p> <p>21 Q. Those are, as far as you know, marked as evidence for this</p> <p>22 hearing?</p> <p>23 A. That's my understanding.</p> <p>24 Q. And you're prepared to talk about those and go through</p> <p>25 those with the Court?</p>
Page 439	Page 441
<p>1 your work on that step of it?</p> <p>2 A. Our firm was one of the firms that was tasked with a</p> <p>3 component of the accounting, the litigation support accounting.</p> <p>4 We reconciled both sample transactions as well as some of the</p> <p>5 transactions that were over a hundred thousand dollars.</p> <p>6 Q. Okay. So you looked at both some things that had been</p> <p>7 picked out as samples of transactions and some that were from</p> <p>8 the high-dollar transactions?</p> <p>9 A. That's correct.</p> <p>10 Q. And other accounting firms assisted with other</p> <p>11 reconciled -- identified -- reconciling transactions?</p> <p>12 A. Yes, they did. The work was broken out by region and then</p> <p>13 assigned to the firms.</p> <p>14 Q. If you look also on that step 2 of the plan, it identifies</p> <p>15 doing a reconciliation, which we've just identified, and we'll</p> <p>16 come back to each one of these things in a little bit more</p> <p>17 detail, just to show the Court what's involved in those steps</p> <p>18 and the kind of work that you did.</p> <p>19 But it also mentions that, in step 2, the step includes</p> <p>20 "examining the accounting system and land records systems for</p> <p>21 completeness of the data system" -- "the data the systems</p> <p>22 contain, the accuracy of the data, how well the systems</p> <p>23 functioned." Did you play any role in that aspect of step 2?</p> <p>24 A. Yes. Our work primarily focused on the financial systems,</p> <p>25 not the land systems.</p>	<p>1 A. Yes, I am.</p> <p>2 Q. All right. Farther down on that same page 7, there's a</p> <p>3 reference to Interior evaluating the accuracy of the accounts by</p> <p>4 combination of, one, transaction-by-transaction reconciliation</p> <p>5 methods, all transactions, certain account types; number 2,</p> <p>6 reconciling high-dollar value transactions; and reconciling a</p> <p>7 statistical sample of lower dollar value transactions. And I</p> <p>8 take it from your testimony you've been involved in those</p> <p>9 various steps?</p> <p>10 A. We've not participated in the account-by-account</p> <p>11 transactions, which is typically the judgment and per capita</p> <p>12 accounts.</p> <p>13 Q. So FTI has not been involved in the judgment and per capita</p> <p>14 account reconciliation?</p> <p>15 A. No, we have not.</p> <p>16 Q. The reconciliation you've been involved in has been in the</p> <p>17 high dollar value?</p> <p>18 A. Yes.</p> <p>19 Q. And some of the sample transactions.</p> <p>20 A. Correct.</p> <p>21 Q. Go to the next slide, please. Go to page 10 of the 2007</p> <p>22 plan. There's a reference and a description on page 10 to</p> <p>23 accounting methodology for a transaction-by-transaction</p> <p>24 reconciliation of the per capita and judgment accounts. And</p> <p>25 that's the one area you have not worked on?</p>

Page 442	Page 444
<p>1 A. Correct.</p> <p>2 Q. Go to the next page. Page 12 of the 2007 plan. And under</p> <p>3 the heading of "Statistical samplings," second paragraph there,</p> <p>4 refers to "advantages of a statistical sampling approach are</p> <p>5 enhanced when combined with other techniques. For this reason</p> <p>6 Interior's using both transaction-by-transaction reconciliation</p> <p>7 methods for large dollar value transactions as a certainty</p> <p>8 stratum of account values, and statistical methods to address</p> <p>9 the huge number of smaller value transactions." Have you been</p> <p>10 involved in that analysis?</p> <p>11 A. Yes, I have.</p> <p>12 Q. Just slide down the page. On that same page, under the</p> <p>13 heading "Litigation Support Accounting," there's a discussion of</p> <p>14 litigation support accounting. Do you -- have you been involved</p> <p>15 in that work?</p> <p>16 A. Yes, I have.</p> <p>17 Q. Can you explain for the Court and for the record what</p> <p>18 litigation support accounting is?</p> <p>19 A. Two different components of the litigation support</p> <p>20 accounting. One were all transactions that were greater or</p> <p>21 equal to a hundred thousand dollars, both credits and debits.</p> <p>22 And the second was a sample of transactions in the land-based</p> <p>23 accounts, and those transactions were allocated among the</p> <p>24 various accounting firms, and each one of the teams reconciled</p> <p>25 the transactions back to the supporting financial documents and</p>	<p>1 into a database for analysis.</p> <p>2 Q. Where is the information found to reenter them?</p> <p>3 A. Depending on the time frame, either in IRMS transaction</p> <p>4 registers or on an actual hard copy ledger card.</p> <p>5 Q. If you go down one paragraph on that same page of the plan,</p> <p>6 the paragraph starts with "through data completeness validation</p> <p>7 project described below, Interior is identifying all the</p> <p>8 land-based IIM accounts in the historical accounting population</p> <p>9 that were opened in the paper ledger era prior to 1985." Have</p> <p>10 you had involvement in that project?</p> <p>11 A. Yes, I have.</p> <p>12 Q. Go to the next slide, please. And going in a few pages</p> <p>13 more to page 17 of the 2007 plan, and under the heading at the</p> <p>14 top of the page there, you see that, Ms. Herman?</p> <p>15 A. Yes, I do.</p> <p>16 Q. "IIM trust fund and related system data tests." It</p> <p>17 mentions that "Interior's performing various tests on the IIM</p> <p>18 trust fund at the aggregate level in addition to those tests</p> <p>19 performed at the individual transaction or account level." Do</p> <p>20 you have an understanding of what that sentence is referring to</p> <p>21 in terms of the tests you've been involved with?</p> <p>22 A. Yes. This is referring to the system tests that we're</p> <p>23 running against the IRMS and TFAS data.</p> <p>24 Q. And if you look down the next paragraph, there's a series</p> <p>25 of bullet points. It refers to there being -- "identify areas</p>
Page 443	Page 445
<p>1 realty documents and ownership documents.</p> <p>2 Q. Okay. So that's one of the categories of your work on the</p> <p>3 historical accounting?</p> <p>4 A. Yes, it is.</p> <p>5 Q. And on page 13 I have a couple of questions, another couple</p> <p>6 highlighted sections. Under the heading "Paper Era</p> <p>7 Transactions," the plan mentions that "approximately 65,000 of</p> <p>8 nearly 268,000 land-based IIM accounts and historical accounting</p> <p>9 population were opened prior to electronic ledger era." Before</p> <p>10 electronic ledger era, that is the paper era, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And have you played a role in analyzing any information</p> <p>13 from the paper ledger era?</p> <p>14 A. Yes, we have.</p> <p>15 Q. Can you briefly summarize to the Court what you have done</p> <p>16 with respect to the paper ledger era?</p> <p>17 A. We have started to identify transactions that will need to</p> <p>18 be rekeyed to the transaction ledger. We've started to identify</p> <p>19 accounts that go back to the paper ledger era, and have actually</p> <p>20 started entering those transactions at this point.</p> <p>21 Q. Okay. What do you mean by rekeyed? What's involved in</p> <p>22 that?</p> <p>23 A. Obviously, by definition the transactions are only</p> <p>24 available on paper, and in order to make them available on a</p> <p>25 historical statement, those transactions are data entered back</p>	<p>1 of vulnerability in historical ledgers," and it talks about --</p> <p>2 do you have an understanding of what these vulnerabilities are,</p> <p>3 describe what they mean for the Court?</p> <p>4 A. Yes. The first is referring to gaps in the electronic</p> <p>5 ledger, so you need to confirm whether or not there are</p> <p>6 transactions that are missing in the electronic ledger before</p> <p>7 you can issue historical statements.</p> <p>8 Q. Have you worked on that kind of problem?</p> <p>9 A. Yes, I have.</p> <p>10 Q. How about the next one, account balances were lost or</p> <p>11 inappropriately dropped from systems.</p> <p>12 A. Yes. The first test that we performed was evaluating the</p> <p>13 transfer of accounts and balances from the IRMS system to the</p> <p>14 TFAS system, and we've actually completed that test, and we've</p> <p>15 just begun our test of the transfer from the ledger cards into</p> <p>16 the IRMS system.</p> <p>17 Q. Okay. So if I can get a better picture of what you're</p> <p>18 doing on that, is, are you comparing the information on the new</p> <p>19 system against the old system to see if they match?</p> <p>20 A. Yes. You compare the ending balance in the IRMS system,</p> <p>21 for instance, to the beginning balance in the TFAS system, to</p> <p>22 confirm that the two are the same.</p> <p>23 Q. Okay. And for the IRMS to the TFAS conversion, that part</p> <p>24 of it's been completed?</p> <p>25 A. Yes, it has.</p>

Page 446	Page 448
<p>1 Q. But you're still working on the paper to the IRMS?</p> <p>2 A. Yes, we are.</p> <p>3 Q. The third vulnerability in this bullet point list in the</p> <p>4 plan refers to calculation of interest being performed</p> <p>5 accurately. Can you describe what that refers to?</p> <p>6 A. This is going to be a comparison of the interest that was</p> <p>7 posted to an individual account, versus the interest that should</p> <p>8 have been posted based on the historical rules that were in</p> <p>9 place at each point in time.</p> <p>10 Q. Do you have involvement in the tests being performed to</p> <p>11 examine the interest calculation?</p> <p>12 A. No, I do not.</p> <p>13 Q. What firm is involved in the interest calculation work?</p> <p>14 A. Clifton Gunderson.</p> <p>15 Q. That's one of the other contracting -- accounting firms</p> <p>16 under contract to the Department of the Interior?</p> <p>17 A. Yes, they are.</p> <p>18 Q. The fourth bullet point here refers to vulnerability of</p> <p>19 monies collected by Interior that were actually deposited into</p> <p>20 the IIM trust fund. What does that refer to?</p> <p>21 A. This is a test going from the land records into the</p> <p>22 accounting records. So you start with the land, you re-create a</p> <p>23 revenue history of that land, and then you determine whether or</p> <p>24 not the funds that should have been collected were collected.</p> <p>25 Q. Have there been tests developed to look at that aspect,</p>	<p>1 A. Yes, I did.</p> <p>2 Q. Okay. Let's go to the next page. Page 18. The plan at</p> <p>3 the second full paragraph describes the DCV project, it says is</p> <p>4 mapping debit and credit transactions within and between the</p> <p>5 IRMS and TFAS systems. Could you give the Court a brief</p> <p>6 description of the two systems that are referenced there, the</p> <p>7 IRMS and the TFAS? You mentioned IRMS, but could you describe</p> <p>8 the relationship between the two systems?</p> <p>9 A. Of course. IRMS was the first system in the electronic</p> <p>10 ledger era.</p> <p>11 Q. Do you know what the -- do you remember what the</p> <p>12 abbreviation stands for?</p> <p>13 A. Integrated records management system.</p> <p>14 Q. And the TFAS?</p> <p>15 A. TFAS is the trust fund accounting system, and it's the</p> <p>16 current system.</p> <p>17 Q. And as part of your work in analyzing the data from these</p> <p>18 systems, did you obtain any data from the IRMS?</p> <p>19 A. We have electronic data from IRMS from approximately</p> <p>20 February of 1985 through March of 2000.</p> <p>21 Q. What kind of data did you collect from IRMS?</p> <p>22 A. We collected two primary types of data, transactional data</p> <p>23 and account-level data.</p> <p>24 Q. Was this from a particular subsystem of the IRMS system?</p> <p>25 A. Yes. It was from the IIM subsystem.</p>
Page 447	Page 449
<p>1 that vulnerability?</p> <p>2 A. Yes, there have.</p> <p>3 Q. Have you participated in those tests?</p> <p>4 A. Yes, I have.</p> <p>5 Q. And the last vulnerability refers to land ownership records</p> <p>6 being fit for use in the historical accounting. Can you</p> <p>7 describe your understanding of that vulnerability to the Court?</p> <p>8 A. The land ownership records are utilized in the litigation</p> <p>9 support accounting to test the allocation of the funds that were</p> <p>10 collected, and so this was a test of the LRIS system to</p> <p>11 determine whether or not it was adequate for use in that LSA</p> <p>12 effort.</p> <p>13 Q. Has that been looked at to your knowledge?</p> <p>14 A. Yes, it has.</p> <p>15 Q. Have you been involved in that aspect?</p> <p>16 A. No, I have not.</p> <p>17 Q. Do you know what contractor or other firm was involved?</p> <p>18 A. NORC.</p> <p>19 Q. A little bit farther down on that same page of the plan,</p> <p>20 page 17, it refers to having land title records officer, LTRO</p> <p>21 test. Did you have any involvement in the LTRO test?</p> <p>22 A. No. This is the test that was executed by NORC.</p> <p>23 Q. The next item on that same page at the very bottom is the</p> <p>24 data completeness validation or DCV. Did you have involvement</p> <p>25 in the data completeness validation work?</p>	<p>1 Q. Did, as far as you know, every agency, region within the</p> <p>2 Department of the Interior use the IIM subsystem?</p> <p>3 A. That's my understanding.</p> <p>4 Q. Was the IRMS a centralized computer system?</p> <p>5 A. No, it was not.</p> <p>6 Q. How was it set up?</p> <p>7 A. IRMS was run on a regional level.</p> <p>8 Q. And how many regions are there presently in Interior?</p> <p>9 A. 12.</p> <p>10 Q. So if that same regional structure carried back in time,</p> <p>11 there should be 12 regional IRMS sets of records?</p> <p>12 A. Yes, there were.</p> <p>13 Q. How do you know that these records exist?</p> <p>14 A. We were provided approximately 56 million transactions in</p> <p>15 the transactional file for IRMS.</p> <p>16 Q. When you say "we," are you referring to --</p> <p>17 A. I'm sorry, FTI, yes.</p> <p>18 Q. What did you do with these 56 million pieces of information</p> <p>19 that you obtained?</p> <p>20 A. We loaded them into a database program referred to as SQL</p> <p>21 server.</p> <p>22 Q. For what purpose were you creating this other data base?</p> <p>23 A. To analyze the completeness of the historical transactions</p> <p>24 provided.</p> <p>25 Q. The database that you used to conduct that examination, is</p>

Page 450	Page 452
<p>1 that connected to the Internet in any way?</p> <p>2 A. No, it is not.</p> <p>3 Q. How do you access it?</p> <p>4 A. Through a local private network in our offices.</p> <p>5 Q. In addition to the transactional information, what other</p> <p>6 account information did you obtain from IRMS?</p> <p>7 A. We received information from something referred to as a</p> <p>8 master file, and the master file contains account-level data, so</p> <p>9 an account number, an account name, an address, balance</p> <p>10 information for that account, at different periods of time.</p> <p>11 Q. Okay. In addition to the master file, did you also</p> <p>12 obtain -- what were the transaction files called that you</p> <p>13 obtained?</p> <p>14 A. The transaction files initially were stored in two</p> <p>15 different files. One is referred to as an ITRAN file, or an</p> <p>16 immediate transaction file, and one is referred to as a HISTRAN</p> <p>17 file, or a history transaction file.</p> <p>18 Q. For the IRMS, approximately when was that phased out in</p> <p>19 favor of TFAS?</p> <p>20 A. The conversion was phased between August of 1998 and March</p> <p>21 of 2000.</p> <p>22 Q. And which system runs and records IIM transactions today</p> <p>23 for Interior?</p> <p>24 A. TFAS.</p> <p>25 Q. I have a couple other highlighted sentences on page 18 of</p>	<p>1 Q. Why is it important to understand whether an account number</p> <p>2 has been reused? What difference does that make to the</p> <p>3 accounting?</p> <p>4 A. In terms of the accounting, the importance is really in</p> <p>5 issuing the historical statement, because you don't want to</p> <p>6 provide one account holder's information to a second account</p> <p>7 holder.</p> <p>8 THE COURT: How is that possible that an account is</p> <p>9 reused?</p> <p>10 THE WITNESS: Unfortunately, historically, once an</p> <p>11 account had been closed, occasionally the account number became</p> <p>12 available for use again. So now when we look back in time, we</p> <p>13 can see that the account started out let's say in my name,</p> <p>14 Michelle, and then switched and later turned to Michael's name.</p> <p>15 And so the balance would have gone to zero under my name and</p> <p>16 would have reopened again under Michael's name.</p> <p>17 MR. QUINN: Not that there's actually an account like</p> <p>18 that for us, Your Honor.</p> <p>19 THE COURT: No, I understand. It's like the numbers</p> <p>20 weren't retired, like Mickey Mantle's number.</p> <p>21 THE WITNESS: Exactly.</p> <p>22 MR. QUINN: And we actually have some examples we</p> <p>23 could put up on the screen to show you, if you like.</p> <p>24 THE COURT: Understood.</p> <p>25 BY MR. QUINN:</p>
Page 451	Page 453
<p>1 the plan. The first one, from one of the middle paragraphs</p> <p>2 after the bullet points, mentions that the project, the DCV</p> <p>3 project you've just described, in part implements the electronic</p> <p>4 data gaps and system conversion tests described in the 2003</p> <p>5 plan.</p> <p>6 Can you describe your understanding of what that's</p> <p>7 referring to?</p> <p>8 A. The data gaps test was the assessment of whether or not the</p> <p>9 IRMS record was complete. And the system conversion test was</p> <p>10 referring to the conversion from IRMS to TFAS.</p> <p>11 Q. And it's my understanding from your testimony you've been</p> <p>12 involved in both of those?</p> <p>13 A. Yes. I designed the tests.</p> <p>14 Q. In the next paragraph you have one more highlighted</p> <p>15 sentence. Refers to DCV project also reviewing all changes to</p> <p>16 account numbers, to ensure that all transactions for an</p> <p>17 individual's account are accurately reflected in the HSA.</p> <p>18 Can you describe your understanding of what that sentence</p> <p>19 is referring to?</p> <p>20 A. There are several different account level tests that we</p> <p>21 perform on the data. The first is to identify accounts that may</p> <p>22 have been reused over time. The second is to identify account</p> <p>23 number changes that have happened over time, such that all of</p> <p>24 the transactions for a given account are reflected on a</p> <p>25 statement correctly.</p>	<p>1 Q. To just finish the overview of your data collection</p> <p>2 efforts, you collected information from IRMS, you mentioned.</p> <p>3 Did you also collect data from TFAS?</p> <p>4 A. Yes, we did. We have data from the beginning of the TFAS</p> <p>5 system through July of 2007 at this point.</p> <p>6 Q. Were there other computer systems that Interior used that</p> <p>7 you looked at or gathered certain pieces of information for to</p> <p>8 aid your analysis?</p> <p>9 A. Yes. We looked at the LRIS system in connection with our</p> <p>10 LSA project, and we also looked at, to a lesser degree, the</p> <p>11 TAAMS system in connection with our account number analyses.</p> <p>12 Q. Could you describe what the LRIS system is?</p> <p>13 A. The LRIS system was the historical system that tracked</p> <p>14 title.</p> <p>15 Q. Does it stand for land records information system?</p> <p>16 A. Yes, it does.</p> <p>17 Q. To your understanding, what role did LRIS play in</p> <p>18 administering IIM information?</p> <p>19 A. LRIS was the system that tracked the title for each</p> <p>20 individual allotment, and to some extent the encumbrances on</p> <p>21 that title.</p> <p>22 Q. And you collected some information off of LRIS?</p> <p>23 A. We only collected information for the accounts that had</p> <p>24 been assigned to us in the sampling in the LSA project.</p> <p>25 Q. As part of the reconciliation effort you looked at that?</p>

Page 454	Page 456
<p>1 A. Exactly.</p> <p>2 Q. And not as part of the data completeness validation work.</p> <p>3 A. No.</p> <p>4 Q. The data completeness validation being tied more directly</p> <p>5 to the transactional information.</p> <p>6 A. To the financial transactions.</p> <p>7 Q. Could you describe briefly for the Court what TAAMS is?</p> <p>8 A. TAAMS is the current system that tracks title and also</p> <p>9 realty for Interior.</p> <p>10 Q. Did you obtain for any of your analyses any information</p> <p>11 from TAAMS?</p> <p>12 A. We obtained some information on account holders, dates of</p> <p>13 birth, dates of death, things of that nature, and occasionally</p> <p>14 some what are referred to as tract history reports, THRs.</p> <p>15 Q. And all this data that you've collected, has this all been</p> <p>16 put into your FTI database?</p> <p>17 A. Yes, it has.</p> <p>18 Q. Okay. Let's talk a little bit more specifically about the</p> <p>19 analysis of data that you've been involved with. I'd like to</p> <p>20 direct your attention to the data completeness validation</p> <p>21 because you just finished some major effort with that analysis.</p> <p>22 Did you at FTI produce a report with respect to the data</p> <p>23 completeness validation work you've done recently?</p> <p>24 A. Yes, we've produced seven reports, actually.</p> <p>25 Q. Could you describe what the reports consist of?</p>	<p>1 regions, in an effort to evaluate regions with the most accounts</p> <p>2 first.</p> <p>3 Q. Okay. Any chance you've left out the six most problematic</p> <p>4 ones for later?</p> <p>5 A. We're going to report on those six in the coming years.</p> <p>6 Q. Could we go to the next slide?</p> <p>7 THE COURT: I'm not sure that answer was responsive,</p> <p>8 and I'd like to hear what the answer is.</p> <p>9 THE WITNESS: No, Your Honor. As you'll see in the</p> <p>10 overall report, we reported on all 12 regions our findings so</p> <p>11 far. It's simply a matter of time to get to all 12.</p> <p>12 THE COURT: I know, but his question was how did you</p> <p>13 select the first six and are the last six the most problematic</p> <p>14 ones.</p> <p>15 THE WITNESS: The first six were the largest ones, so</p> <p>16 I wouldn't suspect that the last six will be more problematic</p> <p>17 than the first six. It's just a matter of taking the time to</p> <p>18 evaluate them.</p> <p>19 THE COURT: Thank you.</p> <p>20 MR. QUINN: Thank you, Your Honor.</p> <p>21 BY MR. QUINN:</p> <p>22 Q. Let's finish up with the plan and we can go and discuss</p> <p>23 more specifically the data completeness analysis. There are two</p> <p>24 other test areas mentioned in the 2007 plan. At page 19 there's</p> <p>25 a posting test, landed dollars test. Have you had involvement</p>
Page 455	Page 457
<p>1 A. The first is an overall report that shows our progress to</p> <p>2 date on analyzing all 12 regions. And the next six reports are</p> <p>3 one report per region of the six, with our 12 obviously that</p> <p>4 we'll issue at the end of the day, but the first six that we've</p> <p>5 performed our work on.</p> <p>6 Q. Okay. So you have an overall report that covers work</p> <p>7 that's gone on across the country?</p> <p>8 A. Yes.</p> <p>9 Q. And then another six separate, more detailed, regional</p> <p>10 reports?</p> <p>11 A. Yes. That chronicle our findings for that particular</p> <p>12 region.</p> <p>13 Q. Does that mean you're finished looking at those regions?</p> <p>14 A. We will most likely look at those regions again as we move</p> <p>15 on to the final six regions. Occasionally as you look at later</p> <p>16 regions it impacts earlier regions.</p> <p>17 Q. You find things that cause you to go back and look at</p> <p>18 something you did before?</p> <p>19 A. Yes.</p> <p>20 Q. And how did you select the six regions to report on.</p> <p>21 A. The first three regions were selected -- we started this</p> <p>22 project looking from the conversion from IRMS to TFAS, and the</p> <p>23 first three regions that were selected were the first three</p> <p>24 regions that converted from IRMS to TFAS. The next three</p> <p>25 regions were selected because of the number of accounts in those</p>	<p>1 with the posting, landed dollars test?</p> <p>2 A. Yes, I have.</p> <p>3 Q. And there's also a mention of a test, interest</p> <p>4 recalculation. And you testified about interest work being done</p> <p>5 by another firm, but I just want to confirm for the record here</p> <p>6 with the Judge whether you have involvement with the interest</p> <p>7 recalculation work.</p> <p>8 A. No, I do not.</p> <p>9 Q. And that's being done by?</p> <p>10 A. Clifton Gunderson.</p> <p>11 Q. Ms. Herman, I put up in front of you a document marked for</p> <p>12 identification as Defendants' Exhibit 152, and ask you if you</p> <p>13 can identify that document for the record, at least by looking</p> <p>14 at its cover.</p> <p>15 A. This is the cover to the binder that contains our overall</p> <p>16 report.</p> <p>17 Q. Electronically this entire set of reports fits onto one</p> <p>18 CD, but when you have it printed out, it looks something like</p> <p>19 this binder, at least one volume?</p> <p>20 A. Yes, it does.</p> <p>21 Q. Do you know approximately -- when you take the overall</p> <p>22 report pages and the regional report pages, approximately how</p> <p>23 many pages the report is?</p> <p>24 A. Just over 10,000 pages.</p> <p>25 Q. Could you describe for the Court the overall goal of the</p>

Page 458	Page 460
<p>1 data completeness validation work?</p> <p>2 A. There's several goals to the data validation. The first</p> <p>3 and foremost is to assess the completeness of the electronic</p> <p>4 ledger era for historical statements, and when I mention</p> <p>5 completeness, it's of the data today versus the data as posted</p> <p>6 historically.</p> <p>7 Q. We had discussed a little bit about reused accounts and</p> <p>8 account number information. Can you describe how that is -- how</p> <p>9 account numbers are examined as part of the data completeness</p> <p>10 analysis?</p> <p>11 A. Yes. Account names, the account holder's name is</p> <p>12 associated in several different places in the electronic data.</p> <p>13 As I mentioned earlier, you have within IRMS two primary files,</p> <p>14 the master file and the transactional file. So the account</p> <p>15 holder name is stored in the master file but it's also stored on</p> <p>16 every record in the transactional file.</p> <p>17 And in TFAS, the account holder name is associated only</p> <p>18 with the account file. So we've taken all of these records and</p> <p>19 we've aggregated them into one singular file for analysis</p> <p>20 purposes.</p> <p>21 Q. Could you describe for the Court the steps involved in</p> <p>22 undertaking the analysis, what it was you were looking at with</p> <p>23 the name information?</p> <p>24 A. We wanted to determine whether or not accounts had been</p> <p>25 reused historically. As I mentioned earlier, we didn't want to</p>	<p>1 A. We've assigned a number to each account that we refer to as</p> <p>2 a NAAN.</p> <p>3 Q. A NAAN?</p> <p>4 A. A NAAN. N-A-A-N.</p> <p>5 Q. What does a NAAN stand for?</p> <p>6 A. Native American account number.</p> <p>7 Q. Could you describe for the Court what the significance is</p> <p>8 of a NAAN to the historical accounting process?</p> <p>9 A. When we issue statements, that's going to be the identifier</p> <p>10 for issuing statements. As we mentioned earlier, because</p> <p>11 account numbers can be reused over time, we can't use the</p> <p>12 account number itself for issuing statements. And historically,</p> <p>13 it was possible to also change account numbers over time.</p> <p>14 So if you were to simply use the account number itself, you</p> <p>15 wouldn't be able to pull all of the related transactions. And</p> <p>16 so this is an identifier that we've created to be able to pull</p> <p>17 all of the transactions related to an account.</p> <p>18 Q. So if the NAANs are assigned properly, then you can</p> <p>19 identify that unique account information?</p> <p>20 A. Yes, you can.</p> <p>21 Q. Is there another set of number -- codes that you developed</p> <p>22 and assigned to aid that process?</p> <p>23 A. Yes. The other code that we developed is referred to as an</p> <p>24 NABN.</p> <p>25 Q. What does that stand for?</p>
Page 459	Page 461
<p>1 issue statements to one beneficiary with transactions that may</p> <p>2 pertain to another beneficiary. So we compared all of the names</p> <p>3 that had ever been associated with the accounts in the</p> <p>4 electronic data to evaluate whether or not an account had more</p> <p>5 than one name associated with it.</p> <p>6 Q. When you say all the electronic data, what date range are</p> <p>7 you speaking of?</p> <p>8 A. All of our analyses cover the entire electronic time frame,</p> <p>9 so it begins in 1985 through 2007, and we receive new data each</p> <p>10 month from OST.</p> <p>11 Q. Does your name account investigation look at more</p> <p>12 information, more accounts than the accounting population that's</p> <p>13 been made part of the scope of the historical accounting</p> <p>14 project?</p> <p>15 A. Yes, it does.</p> <p>16 Q. Does it look at every account that's been opened with some</p> <p>17 name from 1985 through the present?</p> <p>18 A. Yes, it does.</p> <p>19 Q. Do you know approximately how many unique account names</p> <p>20 you've come across?</p> <p>21 A. We've evaluated approximately 645,000 accounts. I don't</p> <p>22 know how many unique names are associated with those.</p> <p>23 Q. Could you describe for the Court the process by which you</p> <p>24 identify unique accounts and make that information traceable by</p> <p>25 the Office of Historical Accounting?</p>	<p>1 A. Native American beneficiary number.</p> <p>2 Q. Could you describe for the Court what the difference is</p> <p>3 between a NAAN and a NABN?</p> <p>4 A. Just like many of us, if you have more than one account, an</p> <p>5 NABN could be associated with multiple NAANs. So you could have</p> <p>6 one person with multiple accounts or multiple NAANs.</p> <p>7 Q. What's the purpose of the NABN then?</p> <p>8 A. We use that number in several of our analyses. But in</p> <p>9 terms of the historical statement, it allows us to pull the most</p> <p>10 current address for an individual in the hopes that we can mail</p> <p>11 the statement to a current address.</p> <p>12 Q. Let's talk about this, because some of the data that's in</p> <p>13 the data completeness reports that you prepared uses a term that</p> <p>14 has a slightly different meaning as some of us have used it here</p> <p>15 in court, and that term is through-put. This is again marked</p> <p>16 for identification Defendant's Exhibit 152 at page 15. If you</p> <p>17 could zoom in on that table.</p> <p>18 Could you identify, first of all, for us, Ms. Herman, what</p> <p>19 this document is that we're looking at right now?</p> <p>20 A. This is an excerpt from our overall report.</p> <p>21 Q. This is the narrative text that appears in the first part</p> <p>22 of the report?</p> <p>23 A. Yes, it is.</p> <p>24 Q. And there's a table there, and ahead of that table, above</p> <p>25 it, is a paragraph describing the term "through-put." Could you</p>

Page 462	Page 464
<p>1 describe for the Court what the term "through-put" means as it 2 relates to the data completeness analysis? 3 A. Through-put in terms of the data completeness analysis 4 looks at every single credit transaction and every debit 5 transaction in the system. And so in this instance you're going 6 to add up every transaction and that's going to equal 7 through-put. 8 Q. Why do you do that? What's the purpose of doing that? 9 A. We trace the flow of funds in the system, and so in order 10 to measure the amount of work that we're doing, this is how we 11 look at the data. 12 Q. So with your use of "through-put," then, you're marking 13 every bookkeeping entry -- 14 A. Yes. 15 Q. -- as it goes through? Could you describe -- you have a 16 table there on the pages up on the screen on page 15. Could you 17 walk through that example for the Court? 18 A. Yes. This example is of a credit coming into a special 19 deposit account, an SDA. 20 Q. What is an SDA? 21 A. An SDA is a temporary holding account. 22 Q. So a collection to an SDA could be what? What examples 23 that you've encountered? 24 A. Lease collection, for instance. 25 Q. Money paid in on a lease?</p>	<p>1 understanding it's about money flowing into and then -- received 2 into, and then disbursed out of the system? 3 A. Exactly. 4 Q. Would you expect the two through-put numbers to measure up 5 against each other in the same way? 6 A. No. In this example, for instance, if you were looking at 7 the through-put as defined the second way, it would be \$200, not 8 \$400. 9 THE COURT: That's not the way I look at it. I think 10 you've got \$100 of through-put. That's my -- 11 MR. QUINN: Cash flow, Your Honor. 12 THE WITNESS: Well, a hundred dollar collection, yes. 13 THE COURT: I'm just interested in how much money has 14 flowed through the system from the intake end to the output end. 15 MR. QUINN: I understand, Your Honor. I want to 16 clarify this, if we go back to read any of the reports, which we 17 hope you will, on the data completeness, that you not be thrown 18 by any of the numbers that appear there. 19 THE COURT: I'm just glad that Ms. Herman doesn't work 20 for the IRS and call all those taxable events. 21 (Laughter) 22 THE WITNESS: Me too. 23 BY MR. QUINN: 24 Q. You testified about reused accounts and account number 25 changes. What other tests have been done as part of the DCV?</p>
Page 463	Page 465
<p>1 A. Exactly. 2 Q. Go ahead with your -- 3 A. So in this example you would have a credit in of a hundred 4 dollars, let's say a lease payment, and then a transfer of that 5 hundred dollars to the beneficial owners, to the individual 6 Indian accounts. So you'd have a debit out of a hundred dollars 7 and a credit into those individual accounts of a hundred 8 dollars. And then the final line in that chart is the 9 associated debit out of that same \$100. 10 Q. So for this one \$100, unique \$100 amount of money, how much 11 through-put is calculated in your example? 12 A. In this example we would consider this \$400 of through-put. 13 Q. So when you speak of through-put in connection with the 14 data completeness validation, you're talking about adding up -- 15 every time that hundred dollars flows through another pot in the 16 system, it gets counted. 17 A. Exactly. 18 Q. Do you have an understanding of how "through-put" has been 19 discussed here in the courtroom in a different sense? 20 A. Yes, I do. 21 Q. Okay. Could you describe your understanding of this other 22 use of the term "through-put"? 23 A. It's my understanding that it's of initial collection into 24 the system and disbursements from the system. 25 Q. So in this latter use of the term, do you have an</p>	<p>1 A. Another one the tests we've performed is on transfers and 2 reversals. We refer to it as transaction mapping. 3 Q. Are there other tests that you've gone through, other 4 checks? 5 A. Yes. We have evaluated disbursements and looking at those 6 relative to the Treasury records, we've evaluated accounts in 7 terms of whether or not the account and the balance in the 8 account agree. 9 Q. If you could give the Court a sense of the level of effort 10 that FTI, people who work with you on the DCV, have had to 11 expend in analyzing this data. 12 A. Typically, our team ranges from 10 individuals to 45, but 13 in a given year in excess of 50,000 man-hours. 14 Q. 50,000 hours in a year spent? 15 A. Yes. 16 Q. In your experience on the data completeness? Is that for 17 just your firm? 18 A. That's only our firm. 19 Q. And I take it there are other firms that have assisted with 20 this work? 21 A. Yes. As I mentioned earlier, in many instances we need to 22 turn to hard-copy documentation, so there's a firm stationed in 23 the AIRR in Lenexa that searches for those documents, and once 24 they're identified, they also have to be imaged and coded. 25 Q. And there are other contracting firms that provide those</p>

Page 466	Page 468
<p>1 services?</p> <p>2 A. Yes, there are.</p> <p>3 Q. Do you request a lot of documents as part of your analysis?</p> <p>4 A. Our first step is to try to resolve these issues using the</p> <p>5 electronic data, but yes, we've requested probably in excess of</p> <p>6 85,000 documents.</p> <p>7 Q. Do you know how many documents you presently are waiting to</p> <p>8 hear back on at the AIRR?</p> <p>9 A. Between 30- and 35,000.</p> <p>10 Q. 30- and 35,000 documents as part of the ongoing work on the</p> <p>11 data completeness?</p> <p>12 A. Yes. There are 20 searchers devoted to our project.</p> <p>13 Q. Ms. Herman, do you recognize this chart?</p> <p>14 A. Yes. It's an excerpt from our overall report.</p> <p>15 Q. From the September 30, 2007, report?</p> <p>16 A. Yes, it is.</p> <p>17 Q. Can you describe for the Court what this chart reveals</p> <p>18 about the data you've looked at?</p> <p>19 A. The blue colors on the chart are the number of transactions</p> <p>20 in each one of the buckets reflected on the bottom of the chart,</p> <p>21 and the green bars are the dollars associated with the</p> <p>22 transactions.</p> <p>23 Q. So in the zero to \$1 range, that first bar graph, what is</p> <p>24 that telling you?</p> <p>25 A. There are 9.1 million non-interest credits in that bucket.</p>	<p>1 transactions in the system are very small in dollar amount.</p> <p>2 Q. If I read this right, 88 and a half percent of all</p> <p>3 transactions are below that hundred dollar, at or below?</p> <p>4 A. Of the non-interest credits, yes.</p> <p>5 Q. When you say non-interest credits, why is that the</p> <p>6 definition you're using for purposes of this data presentation?</p> <p>7 A. I didn't want the chart to be skewed by the interest</p> <p>8 transactions, which may be lower in dollar value.</p> <p>9 Q. And for this data set, for dollar transactions over a</p> <p>10 hundred thousand dollars, what did you find in terms of how</p> <p>11 they're represented in this data set?</p> <p>12 A. Very few transactions make up the majority of the money in</p> <p>13 the system.</p> <p>14 Q. Now, the totals here, can you explain what they relate to,</p> <p>15 what they represent?</p> <p>16 A. Again, this is non-interest credits between 1985 and 2000.</p> <p>17 Q. And this is all types of credits to all types of accounts?</p> <p>18 A. Correct. So it includes special deposit accounts, judgment</p> <p>19 accounts, land-based accounts.</p> <p>20 Q. Defendants' Exhibit 152, that's the overall report, the</p> <p>21 actual report?</p> <p>22 A. Yes, it is.</p> <p>23 Q. I'd like to walk you briefly through -- let's go to the</p> <p>24 next page. Could you describe -- this is Defendants' Exhibit</p> <p>25 153. Could you identify this document for the record, please?</p>
Page 467	Page 469
<p>1 Q. And the dollar value associated with those 9 million</p> <p>2 transactions is?</p> <p>3 A. 2.6 million.</p> <p>4 Q. If you move down to the larger transactions, the last</p> <p>5 chart -- the last bar graph on your chart, the \$10,000 and above</p> <p>6 transactions, what does that indicate?</p> <p>7 A. There's 60,000 transactions -- and now I need bigger</p> <p>8 glasses -- I believe that's 4 billion.</p> <p>9 Q. 4 billion something in dollar value, right?</p> <p>10 A. Yes.</p> <p>11 Q. Now, this chart that you prepared, does that correlate</p> <p>12 directly to the accounting population that's part of the plan?</p> <p>13 A. No, it does not.</p> <p>14 Q. This covers a broader data set?</p> <p>15 A. Yes, it does.</p> <p>16 Q. Everything that you've looked at from 1985 forward?</p> <p>17 A. This goes from '85 through 2000, but it includes</p> <p>18 land-based, judgment, per capita, special deposit, all of the</p> <p>19 accounts in the system.</p> <p>20 Q. Could you describe what this little table you have below</p> <p>21 the chart is -- what information it's conveying about the</p> <p>22 makeup, composition of the data set?</p> <p>23 A. This is summarizing the percentage of transactions and the</p> <p>24 associated percentage of dollars in each stratum that was</p> <p>25 represented on the chart. So that as you can see, most of the</p>	<p>1 A. This is the cover to our Alaska region report.</p> <p>2 Q. One of the six regional reports you issued in September?</p> <p>3 A. Yes, it is.</p> <p>4 THE COURT: You say you're going to walk through each</p> <p>5 of them?</p> <p>6 MR. QUINN: I'm just going to identify them for the</p> <p>7 record, Your Honor, unless you'd just like me to move them into</p> <p>8 evidence.</p> <p>9 THE COURT: Well, I assume you've got a good ways to</p> <p>10 go with this.</p> <p>11 MR. QUINN: I don't think we'll finish in the next 15</p> <p>12 or hour.</p> <p>13 THE COURT: Let's break for the evening then. It's</p> <p>14 after our regular quitting time. We'll be in recess until 9:30</p> <p>15 tomorrow morning. Thank you very much. Have a pleasant</p> <p>16 evening.</p> <p>17 And I don't think you need to introduce each one of them.</p> <p>18 Just introduce them. There's six reports?</p> <p>19 MR. QUINN: Tomorrow's Friday. We're not holding</p> <p>20 court tomorrow?</p> <p>21 THE COURT: Lost my head.</p> <p>22 MR. QUINN: I was lost in the moment, Your Honor. I</p> <p>23 didn't even realize.</p> <p>24 THE COURT: Monday morning. Monday morning.</p> <p>25 (Proceedings adjourned at 5:03 p.m.)</p>

Page 470

INDEX

WITNESS:

PAGE:

Katherine Ramirez Direct Examination Continued..... 339
Cross-Examination..... 396
Michelle Herman Direct Examination..... 434

Page 471

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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that

the foregoing pages are a correct transcript from the record of

proceedings in the above-entitled matter.

BRYAN A. WAYNE

35 (Pages 470 to 471)